CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, and Notices

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 32 JANUARY 21, 1998 NO. 2/3

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 98–5)

REVOCATION OF BAY AREA SERVICES' CUSTOMS GAUGER APPROVAL

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of Customs gauger approval.

SUMMARY: Bay Area Services, of Texas City, Texas, a Customs approved gauger, under Section 151.13 of the Customs Regulations (19 CFR 151.13), was found not operating in compliance with Customs laws and regulations. Specifically, Bay Area Services does not have a valid bond filed with Customs as required under Section 151.13(b)(8) of the Customs Regulations. Accordingly, pursuant to 151.13(k) of the Customs Regulations, notice is hereby given that the Customs commercial gauger approval of Bay Area Services has been revoked with prejudice.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Marcelino Borges, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Ave., NW, Suite 5.5–B, Washington, DC 20229 at (202) 927–1060.

Dated: December 3, 1997.

GEORGE D. HEAVEY,
Director,
Laboratories and Scientific Services.

[Published in the Federal Register, January 9, 1998 (63 FR 1530)]

(T.D. 98–6)

FOREIGN CURRENCIES

QUARTERLY RATES OF EXCHANGE: JANUARY 1, 1998 THROUGH MARCH 31, 1998

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of 31 U.S.C. 5151, for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Country	Name of currency	U.S. dollars
Australia	Dollar	$0.650000
Austria	Schilling	0.078852
Belgium	Franc	0.026874
Brazil	Cruzado	0.895736
Canada	Dollar	0.701508
China, P.R.	Renminbi yuan	0.120337
Denmark	Krone	0.145698
Finland	Markka	0.183318
France	Franc	0.165741
Germany	Deutsche mark	0.554631
Hong Kong	Dollar	0.129032
India	Rupee	0.025381
Iran	Rial	N/A
Ireland	Pound	1.417500
Isreal	Shekel	N/A
Italy	Lira	0.000564
Japan	Yen	0.007553
Malaysia	Dollar	0.251256
Mexico	Peso	0.124069
Netherlands	Guilder	0.492078
New Zealand	Dollar	0.577000
Norway	Krone	0.135656
Philippines	Peso	N/A
Portugal	Escudo	0.005423
Singapore	Dollar	0.588408
South Africa, Republic of	Rand	0.204708
Spain	Peseta	0.006548
Sri Lanka	Rupee	0.016152
Sweden	Krona	0.125392
Switzerland	Franc	0.681663
Thailand	Baht (tical)	0.020704
United Kingdom	Pound	1.641700
Venezuela	Bolivar	0.001986

Dated: January 2, 1998.

FRANK CANTONE,
Chief,
Customs Information Exchange.

(T.D. 98–7)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR DECEMBER 1997

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): December 25, 1997.

Greece drachma:

December 1, 1997	$0.003588
December 2, 1997	.003592
December 3, 1997	.003599
December 4, 1997	.003597
December 5, 1997	.003576
December 6, 1997	.003576
December 7, 1997	.003576
December 8, 1997	.003566
December 9, 1997	.003555
December 10, 1997	.003565
December 11, 1997	.003590
December 12, 1997	.003586
December 13, 1997	.003586
December 14, 1997	.003586
December 15, 1997	.003577
December 16, 1997	.003559
December 17, 1997	.003586
December 18, 1997	.003578
December 19, 1997	.003591
December 20, 1997	.003591
December 21, 1997	.003591
December 22, 1997	.003565
December 23, 1997	.003572
December 24, 1997	.003576
December 25, 1997	.003576
December 26, 1997	.003572
December 27, 1997	.003572
December 28, 1997	.003572
December 29, 1997	.003546
December 30, 1997	.003535
December 31, 1997	.003521

South Korea won:

December 1, 1997	$0.000843
December 2, 1997	.000814
December 3, 1997	.000834
December 4, 1997	.000860
December 5, 1997	.000811
December 6, 1997	.000811
December 7, 1997	.000811

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for December 1997 (continued):

South Korea won (continued):

December 8, 1997	$0.000745
December 9, 1997	.000682
December 10, 1997	.000639
December 11, 1997	.000000
December 12, 1997	.000000
December 13, 1997	.000000
December 14, 1997	.000000
December 15, 1997	.000000
December 16, 1997	.000699
December 17, 1997	.000673
December 18, 1997	.000673
December 19, 1997	.000633
December 20, 1997	.000633
December 21, 1997	.000633
December 22, 1997	.000585
December 23, 1997	.000510
December 24, 1997	.000545
December 25, 1997	.000545
December 26, 1997	.000664
December 27, 1997	.000664
December 28, 1997	.000664
December 29, 1997	.000690
December 30, 1997	.000610
December 31, 1997	.000590

Taiwan N.T. dollar:

December 1, 1997	$0.030817
December 2, 1997	.030817
December 3, 1997	.030769
December 4, 1997	.031056
December 5, 1997	.030817
December 6, 1997	.030817
December 7, 1997	.030817
December 8, 1997	.031104
December 9, 1997	.031104
December 10, 1997	.030722
December 11, 1997	.030395
December 12, 1997	.030534
December 13, 1997	.030534
December 14, 1997	.030534
December 15, 1997	.031104
December 16, 1997	.031104
December 17, 1997	.030675
December 18, 1997	.030912
December 19, 1997	.030912
December 20, 1997	.030912
December 21, 1997	.030912
December 22, 1997	.030912
December 23, 1997	.030581
December 24, 1997	.030581
December 25, 1997	.030581
December 26, 1997	.030488
December 27, 1997	.030488

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for December 1997 (continued):

Taiwan N.T. dollar (continued):

December 28, 1997	$0.030488
December 29, 1997	.030488
December 30, 1997	.030534
December 31, 1997	.030488

Dated: January 2, 1998.

FRANK CANTONE,
Chief,
Customs Information Exchange.

(T.D. 98–8)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR DECEMBER 1997

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 97–83 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): December 25, 1997.

Australia dollar:

December 1, 1997	$0.677000
December 2, 1997	.677000
December 3, 1997	.676000
December 4, 1997	.673200
December 5, 1997	.671200
December 6, 1997	.671200
December 7, 1997	.671200
December 8, 1997	.670500
December 9, 1997	.667500
December 10, 1997	.666500
December 11, 1997	.666000
December 12, 1997	.663000
December 13, 1997	.663000
December 14, 1997	.663000
December 15, 1997	.656600
December 16, 1997	.649000
December 17, 1997	.660500
December 18, 1997	.656500
December 19, 1997	.653000

FOREIGN CURRENCIES—Variances from quarterly rates for December 1997 (continued):

Australia dollar (continued):

December 20, 1997	$0.653000
December 21, 1997	.653000
December 22, 1997	.652300
December 23, 1997	.656500
December 24, 1997	.655800
December 25, 1997	.655800
December 26, 1997	.655900
December 27, 1997	.655900
December 28, 1997	.655900
December 29, 1997	.654000
December 30, 1997	.651700
December 31, 1997	.651500

India rupee:

December 1, 1997	$0.025349
December 2, 1997	.025316
December 3, 1997	.025349
December 4, 1997	.025543
December 5, 1997	.025641
December 6, 1997	.025641
December 7, 1997	.025641
December 8, 1997	.025644
December 9, 1997	.025543
December 10, 1997	.025543
December 11, 1997	.025253
December 12, 1997	.025253
December 13, 1997	.025253
December 14, 1997	.025253
December 15, 1997	.025268
December 16, 1997	.025000
December 17, 1997	.025000
December 18, 1997	.025000
December 19, 1997	.025000
December 20, 1997	.025000
December 21, 1997	.025000
December 22, 1997	.025602
December 23, 1997	.025634
December 24, 1997	.025641
December 25, 1997	.025641
December 26, 1997	.025445
December 27, 1997	.025445
December 28, 1997	.025445
December 29, 1997	.025536
December 30, 1997	.025413
December 31, 1997	.025445

Japan yen:

December 1, 1997	$0.007743
December 2, 1997	.007766
December 3, 1997	.007769
December 4, 1997	.007728
December 5, 1997	.007680
December 6, 1997	.007680
December 7, 1997	.007680
December 8, 1997	.007663
December 9, 1997	.007704

FOREIGN CURRENCIES—Variances from quarterly rates for December 1997 (continued):

Japan yen (continued):

December 10, 1997	$0.007747
December 11, 1997	.007697
December 12, 1997	.007667
December 13, 1997	.007667
December 14, 1997	.007667
December 15, 1997	.007629
December 16, 1997	.007641
December 17, 1997	.007874
December 18, 1997	.007780
December 19, 1997	.007746
December 20, 1997	.007746
December 21, 1997	.007746
December 22, 1997	.007670
December 23, 1997	.007692
December 24, 1997	.007689
December 25, 1997	.007689
December 26, 1997	.007675
December 27, 1997	.007675
December 28, 1997	.007675
December 29, 1997	.007689
December 30, 1997	.007689
December 31, 1997	.007666

Malaysia dollar:

December 1, 1997	$0.280112
December 2, 1997	.277932
December 3, 1997	.273224
December 4, 1997	.268097
December 5, 1997	.250000
December 6, 1997	.250000
December 7, 1997	.250000
December 8, 1997	.273973
December 9, 1997	.273075
December 10, 1997	.273075
December 11, 1997	.264901
December 12, 1997	.261780
December 13, 1997	.261780
December 14, 1997	.261780
December 15, 1997	.258065
December 16, 1997	.258198
December 17, 1997	.262123
December 18, 1997	.264026
December 19, 1997	.261097
December 20, 1997	.261097
December 21, 1997	.261097
December 22, 1997	.261780
December 23, 1997	.260078
December 24, 1997	.256410
December 25, 1997	.256410
December 26, 1997	.260078
December 27, 1997	.260078
December 28, 1997	.260078
December 29, 1997	.256739
December 30, 1997	.256542
December 31, 1997	.257400

FOREIGN CURRENCIES—Variances from quarterly rates for December 1997 (continued):

Mexico peso:

December 1, 1997	$0.122100
December 2, 1997	.122549
December 5, 1997	.122699
December 6, 1997	.122699
December 7, 1997	.122699
December 11, 1997	.121803
December 12, 1997	.122399
December 13, 1997	.122399
December 14, 1997	.122399
December 24, 1997	.122063
December 25, 1997	.122063
December 26, 1997	.122775
December 27, 1997	.122775
December 28, 1997	.122775

herlands guilder:

December 9, 1997	$0.474068

New Zealand dollar:

December 1, 1997	$0.609200
December 2, 1997	.606700
December 3, 1997	.605000
December 4, 1997	.602700
December 5, 1997	.600000
December 6, 1997	.600000
December 7, 1997	.600000
December 8, 1997	.598600
December 9, 1997	.597000
December 10, 1997	.600000
December 11, 1997	.595500
December 12, 1997	.596000
December 13, 1997	.596000
December 14, 1997	.596000
December 15, 1997	.591000
December 16, 1997	.579000
December 17, 1997	.587000
December 18, 1997	.584300
December 19, 1997	.581000
December 20, 1997	.581000
December 21, 1997	.581000
December 22, 1997	.578800
December 23, 1997	.583500
December 24, 1997	.584800
December 25, 1997	.584800
December 26, 1997	.584000
December 27, 1997	.584000
December 28, 1997	.584000
December 29, 1997	.583500
December 30, 1997	.582300
December 31, 1997	.580300

FOREIGN CURRENCIES—Variances from quarterly rates for December 1997 (continued):

Singapore dollar:

December 3, 1997	$0.619771
December 4, 1997	.619579
December 5, 1997	.618429
December 6, 1997	.618429
December 7, 1997	.618429
December 8, 1997	.618620
December 9, 1997	.615006
December 10, 1997	.617475
December 11, 1997	.612370
December 12, 1997	.603136
December 13, 1997	.603136
December 14, 1997	.603136
December 15, 1997	.594530
December 16, 1997	.586166
December 17, 1997	.594177
December 18, 1997	.599161
December 19, 1997	.598265
December 20, 1997	.598265
December 21, 1997	.598265
December 22, 1997	.596837
December 23, 1997	.597907
December 24, 1997	.599520
December 25, 1997	.599520
December 26, 1997	.597729
December 27, 1997	.597729
December 28, 1997	.597729
December 29, 1997	.598802
December 30, 1997	.596303
December 31, 1997	.593120

Thailand baht (tical):

December 1, 1997	$0.024272
December 2, 1997	.023981
December 3, 1997	.023613
December 4, 1997	.023923
December 5, 1997	.023923
December 6, 1997	.023923
December 7, 1997	.023923
December 8, 1997	.024155
December 9, 1997	.023337
December 10, 1997	.023697
December 11, 1997	.022936
December 12, 1997	.022002
December 13, 1997	.022002
December 14, 1997	.022002
December 15, 1997	.021097
December 16, 1997	.021277
December 17, 1997	.021978
December 18, 1997	.022624
December 19, 1997	.022173
December 20, 1997	.022173
December 21, 1997	.022173
December 22, 1997	.022321
December 23, 1997	.021739
December 24, 1997	.022051
December 25, 1997	.022051

FOREIGN CURRENCIES—Variances from quarterly rates for December 1997 (continued):

Thailand baht (tical) (continued):

December 26, 1997	$0.021978
December 27, 1997	.021978
December 28, 1997	.021978
December 29, 1997	.021786
December 30, 1997	.021322
December 31, 1997	.021368

Dated: January 2, 1998.

FRANK CANTONE
Chief,
Customs Information Exchange.

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, December 24, 1997.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

REVOCATION OF RULING LETTER PERTAINING TO THE CLASSIFICATION OF MINERAL LABORATORY BAGS

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of mineral laboratory bags.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Hollaway, Tariff Classification Appeals Division (202) 482–6996.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On November 19, 1997, Customs published in the CUSTOMS BULLETIN, Volume 31, Number 47, a notice of a proposal to revoke New York Rul-

ing Letter (NY) A80955, dated March 22, 1996. In NY A80955, Customs incorrectly classified the mineral laboratory bags as other made up textile articles under subheading 6307.90.9989, HTSUSA. The mineral laboratory bags are correctly classified as sacks and bags of a kind used for the packing of goods under subheading 6305.20.0000, HTSUSA (of cotton), subheading 6305.33.0020, HTSUSA (of polypropylene strip), or subheading 6305.39.0000 (of polypropylene or of polyester).

Pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1625(c)(1), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking New York Ruling Letter (NY) A80955, dated March 22, 1996, pertaining to the tariff classification of mineral laboratory test bags under heading 6307 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Publication of rulings or decision pursuant to 19 U.S.C. 1625 does not constitute a change in practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: December 22, 1997.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 22, 1997.

CLA–2RR:CR:TE 960798 RH
Category: Classification
Tariff No. 6305.20.0000, 6305.33.0020,
and 6305.39.0000

MS. AGNES TAM
MEE SUM TRADING LIMITED
Flat A, 15/F
Cheung Lee Ind. Bldg., No. 9
Cheung Lee St.
Chaiwan, Hong Kong

Re: Revocation of NY A80955; classification of mineral laboratory test bags; heading 6305; heading 6307; other made up articles; sacks and bags.

DEAR MS. TAM:

On March 22, 1996, Customs issued New York Ruling Letter (NY) A80955, addressed to you on behalf of Mee Sum Trading Limited, concerning the classification of mineral laboratory test bags. In that ruling, Customs classified the bags under subheading 6307.90.9989 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as other made up textile articles.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY A80955 was published on November 19, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 47.

Facts:

In NY A80955 the bags are described as follows:

> Samples of eleven bags were submitted. Seven bags are made of polypropylene spunbonded nonwoven fabric. The bags are in various sizes ranging from approximately 12.5″ × 7″ to 28″ × 17″ with either a drawstring at the top or a textile woven strap attached onto the side for closure. An identification tag is attached at the side for record use. Three bags are constructed of polyester spunbonded nonwoven fabric and measure in various sizes ranging from approximately 12.5″ × 7″ to 24″ × 12″ with drawstring at the top for closure and record tag. Four bags are made of cotton woven fabric and measure in various sizes ranging from approximately 12″ × 7″ to 24″ × 12″, also with drawstring at the top and record tag.

Issue:

Whether the mineral laboratory bags are classifiable under heading 6307, HTSUSA, as other made up articles, or under subheading 6305, HTSUSA, as sacks and bags of a kind used for the packing of goods?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Customs initially classified the mineral laboratory bags under heading 6307, a residual provision that provides for other made up textile articles not specifically provided for elsewhere in the tariff.

Heading 6305, HTSUSA, provides for sacks and bags, of a kind used for the packing of goods. The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN), although not legally binding, are the official interpretation of the tariff at the international level.

The EN to heading 6305 state in pertinent part:

> This heading covers textile sacks and bags of a kind normally used for the packing of goods for transport, storage or sale.
>
> These articles, which vary in size and shape, include in particular flexible intermediate bulk containers, coal, grain, flour, potato, coffee or similar sacks, mail bags, and small bags of the kind used for sending samples of merchandise by post. The heading also includes such articles as tea sachets.

In Headquarters Ruling Letter (HQ) 958078 dated December 12, 1995, we held that bags used to transport experimental seeds from experimental plots to research facilities and which were discarded after the seeds were evaluated were properly classifiable under heading 6305. Like the bags in HQ 958078, the mineral laboratory bags in question are used to collect and transport samples to a research facility for analysis. The use of—the mineral bags falls within the function described in the EN to heading 6305 for sacks and bags—for the packing of goods for transport, storage or sale. Moreover, in our opinion minerals constitute "goods" for the purposes of heading 6305. Accordingly, the mineral laboratory bags are classifiable under that heading.

Holding:

The mineral laboratory bags made of cotton woven fabrics are classifiable under subheading 6305.20.0000, HTSUSA. They are dutiable at the general column rate at 6.8 percent *ad valorem* and the textile category number is 369. The mineral laboratory bags constructed of polypropylene spunbonded nonwoven fabrics are classifiable under subheading 6305.39.0000, HTSUSA, or under subheading 6305.33.0020, HTSUSA, if made of stip. The polyester bags are classifiable under 6305.39.0000, HTSUSA. Both the polypropylene and polyester bags are dutiable at the general column rate at 9.2 percent *ad valorem* and the textile category number is 669.

Effect on Other Rulings:

NY A80955 is hereby revoked. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rul-

ings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

MODIFICATION OF CUSTOMS RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF HIGH SPEED ROBOTIC INTEGRATED CIRCUIT TEST HANDLER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying ruling letters pertaining to the tariff classification of the HM–3000 Hummingbird high speed robotic integrated circuit test handler (HM–3000) under the Harmonized Tariff Schedule of the United States (HTSUS).

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after March 23, 1998.

FOR FURTHER INFORMATION CONTACT: David W. Spence, Attorney-Advisor, Commercial Rulings Division, (202) 927–2337.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On November 19, 1997, Customs published a notice in the CUSTOMS BULLETIN, Volume 31, Number 47, proposing to modify PD A82573, issued May 3, 1996, and NY 808487, issued April 13, 1995, concerning the tariff classification of the HM–3000. No comments were received in response to the notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying PD A82573 and NY 808487 to reflect the proper classification of the HM–3000 under subheading 9031.41.00, HTSUS, as an other optical measuring or checking instrument for inspecting semiconductor wafers or devices. HQ 960051 modifying PD A82573 and NY 808487 is set forth as the Attachment to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations [19 CFR 177.10(c)(1)].

Dated: December 22, 1997.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 22, 1997.

CLA–2 RR:CR:GC 960051 DWS
Category: Classification
Tariff No. 9031.41.00

MR. DANIEL J. GLUCK
SERKO & SIMON, LLP
One World Trade Center, Suite 3371
New York, NY 10048

Re: Reconsideration of PD A82573; HM–3000 Hummingbird; HQS 952297 and 952942; Chapter 90, Additional U.S. Note 3; 9030.82.00; 9030.90.84.

DEAR MR. GLUCK:

This is in response to your submission of December 6, 1996, on behalf of Kanematsu USA Inc., requesting reconsideration of PD A82573, dated May 3, 1996, concerning the classification of the HM–3000 Hummingbird under the Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–82, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of PD A82573 and NY 808487, dated April 13, 1995, was published on November 19, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 47. No comments were received in response to the notice.

Facts:

The merchandise consists of the HM–3000 Hummingbird (HM–3000), which is a high speed robotic integrated circuit (IC) test handler. You claim that the HM–3000 is a free-standing, independent unit which is an instrument for checking semiconductor devices. The first step in the HM–3000 test process is the initial leadscanning phase, which involves an evaluation of a sampling from a shipment. During leadscanning, IC packages or devices are checked for accuracy of their leads' coplanarity (horizontal alignment), spacing, offset, pitch (the lateral distance between the tip centers), body standoff (from the bottom of the body to the reference seating plane) width, lead span, lead length deviation, and terminal dimension (tip to tip between opposite lead). Lack of coplanarity, as well as incorrect spacing and dimensions, of the leads will thwart the IC device's ability to conduct electronic commands. It is our understanding that the leadscanning is performed utilizing an optical scanning device contained within the HM–3000.

The next step in the process is the manipulation phase, during which the HM–3000 performs a series of tasks: lifting and transporting trays and individual devices; air and pneumatic devices are activated causing the IC devices to be inserted into the test sites; and data

transmitted to the HM–3000, by which the evaluation of the IC devices is performed, is directed to the test sites containing the devices, where there electrical parameters are analyzed and their performances are evaluated.

Issue:

Whether the HM–3000 is classifiable under subheading 9030.82.00, HTSUS, as an other instrument for measuring or checking the electrical quantities of semiconductor wafers or devices, under subheading 9030.90.84, HTSUS, as an accessory of the instruments of subheading 9030.82, HTSUS, or under subheading 9031.41.00, HTSUS, as an other optical measuring or checking instrument for inspecting semiconductor wafers or devices.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chanter notes.

The HTSUS provisions under consideration are as follows:

9030.82.00: [o]scilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof: [o]ther instruments and apparatus: [f]or measuring or checking semiconductor wafers or devices.

Goods classifiable under this provision receive duty-free treatment.

9030.90.84: * * *: [p]arts and accessories: [o]ther: [o]ther: [o]f instruments and apparatus of subheading 9030.82.

The general, column one rate of duty for goods classifiable under this provision is 2.3 percent *ad valorem*.

9031.41.00: [m]easuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof: [o]ther optical instruments and appliances: [f]or inspecting semiconductor wafers or devices or for inspecting photomasks or reticles used in manufacturing semiconductor devices.

Goods classifiable under this provision receive duty-free treatment.

In PD A82573, issued to Kanematsu USA Inc. on May 3, 1996, Customs held the HM–3000 to be classifiable under subheading 9030.90.85, HTSUS (the 1995 precursor to subheading 9030.90.84, HTSUS). Classification of the HM–3000 was also dealt with in NY 808487. In that ruling, Customs held the HM–3000 to be classifiable under subheading 9030.89.40, HTSUS (the 1995 precursor to subheading 9030.82.00, HTSUS).

In HQ 952297, dated July 30, 1993, we stated that:

> [t]he term "checking" is not defined in the HTSUS. A tariff term that is not defined in the HTSUS or in the Harmonized Commodity Description and Coding System Explanatory Notes (EN) is construed in accordance with its common and commercial meaning. *Nippon Kogasku (USA) Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).
>
> In *United States v. Corning Glass Works*, 66 CCPA 25,27,586 F.2d 822, 825 (1978), the Court of Customs and Patent Appeals, quoting Webster's Third New International Dictionary, 381 (1971), stated:
>
> "Check" is defined as "to inspect and ascertain the condition of especially in order to determine that the condition is satisfactory; * * * investigate and insure accuracy, authenticity, reliability, safety, or satisfactory performance of * * *; to investigate and make sure about conditions or circumstances * * *."

We agree with you that the HM–3000 performs a checking function, in that it inspects and ascertains the condition of the leads in the IC devices to make sure that they are properly positioned. However, you claim that the HM–3000 checks the IC devices for **electrical quantities.** We disagree. It is our understanding that the HM–3000 utilizes an optical scanning device to check the IC packages or devices to ensure that the leads are properly positioned. Although there is little information concerning the term "electrical quantities" in the HTSUS, it is our position that the HM–3000, which merely checks the placement of

leads, does not qualify as an instrument for checking electrical quantities. Consequently, as the HM–3000 does not meet the terms of heading 9030, HTSUS, it is precluded from classification under subheading 9030.82.00, HTSUS.

We will now determine whether the HM–3000 is properly classifiable under subheading 9030.90.84, HTSUS, as an accessory of the instruments of heading 9030, HTSUS. In HQ 952942, dated April 27, 1993, we stated that:

> [a] part of an article, for tariff purposes, is a thing necessary to the completion of that article. It is an integral, constituent or component part, without which the article to which it is joined could not function as such article. An accessory, on the other hand, is something that is not essential in itself but adds to the effectiveness of something else. In each case, the nature, function, and purpose of an article must be examined in relation to the article to which it is attached or which it is designed to serve.

It is our position that the HM–3000 is not an accessory, as it is a free-standing and independent unit which is capable of performing a checking function without the aid of another machine. The purpose of the HM–3000 is not to add to the effectiveness of another machine, as it is effective in and of itself. Therefore, the HM–3000 is precluded from classification under subheading 9030.90.84, HTSUS.

Chapter 90, additional U.S. note 3, HTSUS, states that:

> [f]or the purposes of this chapter, the terms *"optical appliances"* and *"optical instruments"* refer only to those appliances and instruments which incorporate one or more optical elements, but do not include any appliances or instruments in which the incorporated optical element or elements are solely for viewing a scale or for some other subsidiary purpose.

We find that the HM–3000 meets the term "optical instrument" as it incorporates an optical scanning device, the purpose of which is to check the IC packages and devices to ensure their properly positioning. Such a purpose is not subsidiary. Therefore, as we have previously stated that the HM–3000 is also a checking instrument, it is classifiable under subheading 9031.41.00, HTSUS.

Holding:

The HM–3000 Hummingbird is classifiable under subheading 9031.41.00, HTSUS, as an other optical measuring or checking instrument for inspecting semiconductor wafers or devices.

NY 808487 and PD A82573 are modified to reflect the reasoning herein. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs regulations [19 CFR 177.10(c)(1)].

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF CUSTOMS RULING LETTERS RELATING TO THE APPLICABILITY OF THE VESSEL REPAIR STATUTE PRIOR TO THE DOCUMENTATION OF VESSELS UNDER THE UNITED STATES FLAG

ACTION: Notice of proposed revocation of rulings.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke all prior rulings inconsistent with its proposed position regarding the applicability of the vessel repair statute prior to the documentation of vessels under the United States flag. It is now Customs position that a vessel that is not documented under the U.S. flag at the time foreign repair work is performed shall be assessed vessel repair duties at the time of its first arrival in the U.S. if it is clear that the vessel intended to engage in the U.S. foreign or coastwise trade at the time the foreign repair work was performed.

DATE: Comments must be received on or before February 20, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the Entry Procedures and Carriers Branch.

FOR FURTHER INFORMATION CONTACT: Glen E. Vereb, Entry Procedures and Carriers Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229 (202) 927–2320.

SUPPLEMENTAL INFORMATION

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke all prior rulings inconsistent with its proposed position regarding the applicability of the vessel repair statute prior to the documentation of vessels under the United States flag. Customs invites comments on the correctness of the proposed revocation.

Title 19, United States Code, section 1466, provides in pertinent part for payment of duty in the amount of 50 percent *ad valorem* on the cost of foreign repairs to a vessel documented under the laws of the United States to engage in the foreign or coastwise trade, *or vessels intended to engage in such trade.* (Emphasis added)

For many years Customs rulings applied the plain wording of the vessel repair statute holding that foreign repair work was dutiable if the

vessel was documented for, or intended to engage in, the foreign or coastwise trade. More recent Customs decisions held that in certain cases foreign shipyard work performed on a vessel prior to its documentation under the laws of the United States to engage in the foreign or coastwise trade is nondutiable under section 1466. The rationale for this position was that the U.S. does not have the authority to coerce the utilization of domestic repair facilities for vessels which are documented under the flag of another nation or are not documented at all. To the extent that a vessel is clearly intended to engage in the foreign or coastwise trade, Customs now believes this latter position to be in direct contravention of the statutory language which specifically places duty upon repairs to those vessels not so documented at the time of foreign shipyard work but which are nonetheless intended to engage in those trades.

In view of the above, Customs will apply 19 U.S.C. 1466 in those instances where a vessel is undocumented, including temporarily removed from United States documentation during the course of, or prior to, work performed in a foreign shipyard and is then redocumented for, or used in, or from available evidence deemed intended to be used in the United States foreign or coastwise trade.

Dated: December 23, 1997.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, January 7, 1998.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

MODIFICATION OF CUSTOMS RULINGS RELATING TO COUNTRY OF ORIGIN MARKING REQUIREMENTS OF WATCH STRAPS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of ruling letters concerning substantial transformation of watch straps, bands and bracelets.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), this notice advises interested parties that Customs is modifying prior Customs rulings pertaining to the country of origin of watch straps (including watch bands and bracelets). Notice of the proposed modification was published in the CUSTOMS BULLETIN, Volume 31, No. 47. Eighteen comments were received in response to that publication.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Burton Schlissel, Special Classification and Marking Branch (202) 927–1034.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On November 19, 1997, Customs published in the CUSTOMS BULLETIN, Volume 31, No. 47, a notice of proposal to modify prior Customs rulings pertaining to the country of origin of watch straps (including watch bands and watch bracelets). Customs had previously ruled in these cases that a watch strap must be separately marked when its country of

origin is different than the country of origin of the country of origin of the watch. In these rulings, Customs had reasoned that the attachment of the watch strap to the watch did not effect a substantial transformation of the watch strap and that after attachment, the strap maintained its separate identity. In proposing to modify these rulings, Customs stated that it was now of the opinion that when watch straps are assembled to a watch that was produced in the country of assembly, the watch strap becomes a product of that country by becoming an integral part of the watch. As a result, the country of origin of the watch strap will be the country where the watch was produced.

Eighteen comments were received in response to the notice. All of the commenters expressed support for the proposed modification. Many of the commenters note that the proposed modification is in accord with the NAFTA Rules of Origin and is a step toward harmonizing U.S. rules with international rules of origin. Some commenters are of the opinion that generally a watch strap loses its identity during the assembly process and that a separate marking requirement for watch straps leads to consumer confusion as to the entire watch. Other commenters believe that there is a substantial transformation of watch straps when they are specially designed and fitted for a particular watch head. One commenter believes that Customs should consider expanding the proposed ruling to include all straps that are attached to watches at the time of exportation. This commenter is of the opinion that the strap is substantially transformed in the country in which it is attached to the watch, whether or not the movement is also assembled in that country.

While all of the commenters were in favor of the proposed modification, some of the comments appear to suggest that Customs proposal would apply to all watch straps, when assembled abroad with a watch or watch parts, regardless of where the movement was assembled. In the proposed modification, Customs has specifically limited the circumstances under which a watch strap undergoes a substantial transformation to the assembly with a watch that is produced in the same country as the country of assembly (i.e., the country where the movement is produced). It remains Customs position that the assembly of a watch strap with a watch in a country other than the country in which the watch was produced does not result in a substantial transformation of the watch strap. In these circumstances, Customs believes that the watch strap does not lose its identity during the assembly process as it does not undergo the requisite integration with the watch, which is produced in a country other than the country of assembly with the watch strap.

Another commenter, while agreeing with Customs position, believes that the proposed ruling should be clarified to indicate that when the watch strap is assembled to the watch in the country where the watch was produced, no country of origin marking is required on the watch strap and that when the watch strap is assembled in a country other than the country of origin of the watch, it should not be permissible to mark on the watch strap the country of origin of the watch as well as the

country of origin of the watch strap. This commenter also believes that Customs should clarify the proposed ruling to indicate whether it is intended to apply only to a strap permanently attached (by welding or riveting) to the watch in the country where the watch was produced, or whether it would also apply to a removable or detachable watch strap when assembled with a watch. The commenter is of the opinion that a substantial transformation does not occur when a removable or detachable strap is assembled with a watch.

Under the proposed ruling, a watch strap assembled to a watch that is produced in the country of assembly becomes a product of that country. Therefore, provided country of origin marking of the watch is otherwise conspicuous, legible and permanent, the watch strap is not required to be marked. In cases where the watch strap is assembled to the watch in a country other than the country where the watch was produced, it is our view that neither the watch nor the watch strap is substantially transformed in the country of final assembly and each must be separately marked with its country of origin. Any additional marking on the watch strap which may cause confusion as to the country of origin of the strap and/or the watch would not be an acceptable marking.

As stated in the proposed ruling, Customs is of the opinion that when a watch strap is assembled to a watch that was produced in the country of assembly, the watch strap becomes a product of that country. It is Customs view that the assembly operation may be permanent, such as through welding or riveting, or it may involve the assembly of a watch strap that is removable or detachable. In either case, Customs believes that the watch strap undergoes a substantial transformation, as it loses its identity during the total operation, which includes the production of the watch itself plus final assembly, and becomes an integral part of the watch.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying prior Customs rulings to reflect that when a watch strap is assembled to a watch that was produced in the country of assembly, the country of origin of the watch strap will be the country where the watch was produced. HRL 560471, which modifies the prior rulings, is set forth as an Attachment to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625 does not constitute a change in practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: January 5, 1998.

SANDRA L. BELL,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, January 5, 1998.
MAR–05 RR:TC:SM 560471 BLS

Category: Marking
PORT DIRECTOR
3150 Tchulahoma Road
Memphis, TN 38118

Re: Country of origin marking of watch bands; modification of prior rulings.

DEAR SIR:

This is in reference to a letter dated May 20, 1997, and subsequent correspondence, on behalf of Belair Quartz, Inc. ("Belair Quartz") and Belair Time Corporation ("Belair Time"), concerning the country of origin marking of certain watch bands assembled with their watches in the US. Virgin islands ("USVI"). A sample watch with its watchband has been submitted.

Facts:

The following information has been furnished by counsel for Belair Quartz and Belair Time:

Belair Quartz, a Virgin Islands company, imports into the USVI watch bands primarily from the Far East, with limited supplies from Switzerland, Austria, Germany, France and Italy. Belair also imports the unassembled component parts of its movements from Switzerland. These movement parts are then fully assembled into finished watch movements in Belair Quartz's St. Croix plant. Dials, hands, crowns, tubes, pushers, crystals, backs, links, buckles, pins, hands, discs, cases and other parts are also imported from the U.S., Switzerland, Germany, Hong Kong, France, Taiwan, the People's Republic of China, Japan and other countries throughout the world. Belair Quartz assembles the finished watch movements with these other parts and the watch bands to produce finished watches in its USVI plant.

Belair Quartz ships the finished watches, with their bands, to Belair Time in New Jersey. Belair Time conducts final processing of the watches, packages them for sate, and distributes them to various U.S. and foreign destinations, including Japan, the United Kingdom. Taiwan, Australia, New Zealand, Canada, and locations in the Caribbean, and Central and South America.

Belair Time designs the watches manufactured by Belair Quartz as integrated units, and each watch band is specifically designed to fit only one particular watch case, and each case, in turn, is designed specifically to fit one band. Belair provides technical drawings to the suppliers that produce its watch cases and bands, and requires that the case and band manufacturers coordinate their engineering to allow for maximum integration of the band with the case. Pre-production technical samples are produced and exchanged between the case and band factories, as well as Belair's technical department, and modifications are made as required.

After arrival in the USVI from the various source countries, the watch bands undergo extensive processing and testing before they are attached to watch heads. Such operations include milling, finishing, testing, and adjusting. We note that the bands are attached to the watch heads with the use of four spring pins (two on each side of the watch). In order to accommodate band processing, a building addition was erected in 1987 having a total cost of $50,772.90, which included the cost of architectural drawings, permits, construction, furniture, and shelving for storage. 1997 costs for machinery used in band processing is estimated to be $87,800. Labor cost is estimated to be $69,300.00.

Issue:

What are the country of origin marking requirements for the completed watches assembled in the USVI with watch bands from the Far East, Switzerland, and other countries?

Law and Analysis:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspic-

uous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. 1304 was "that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." *United States v. Friedlaender & Co.*, 27 C.C.P.A. 297 at 302; C.A.D. 104 (1940).

Materials imported into an insular possession, as in this case, become a product or manufacture of that possession only if they are substantially transformed there into a new and different article of commerce. A substantial transformation occurs when an article emerges from a process with a new name, character, or use different from that possessed by the article prior to processing. *See Texas Instruments, Inc., v. United States*, 69 C.C.P.A. 152, 681 F.2d 778 (1982). In determining whether the combining of parts or materials constitutes a substantial transformation, the issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *See Belcrest Linens v. United States*, 741 F.2d 1368 (Fed. Cir. 1984).

Customs' long-standing position has been that the origin of a watch (excluding the strap, band or bracelet) is the country of assembly of the watch movement. Although the addition of the hands, dial, case or watchband may add definition to the timepiece, it does not substantially change the character or use of the watch movement, which is the essence of the watch. *See* Headquarters Ruling Letter (HRL) 735197, dated January 4, 1994. In the instant case, the country of origin of the watches is the USVI, as it is stated that the unassembled movement components are assembled in the USVI to form a complete movement. *See* Headquarters Ruling Letter (HRL) 731546 dated October 27, 1978.

Customs has also ruled in numerous cases that the country of origin of a watch strap must be separately marked when its country of origin is different from the country of origin of the watch. *See*, e.g., HRLs 733533 dated August 3, 1990 and 734565 dated October 16, 1992. In these cases, Customs has reasoned that the attachment of the watch strap to the watch does not effect a substantial transformation of the watch strap and that after attachment, the strap maintains its separate identity.

Therefore, under Customs present policy, the watch would be considered a product of the USVI and the band a product of Switzerland or other country in which it was produced, unless a determination is made that the band undergoes a substantial transformation as a result of the processing in the USVI.

Belair argues that Customs position regarding origin of the watch bands as set forth in these cases is not applicable to the situation at hand; that the subject watch bands are produced specifically for the watches to which they will be assembled; that they are a single integrated article and that the bands lose their individual identity as a result of assembly with the watches, resulting in a substantial transformation of these components. As the watches in this case are considered to be a product of the USVI, and as such are not considered to be of foreign origin, Belair contends that the assembled watch bands should be similarly treated for origin purposes since they are an integral part of the watch. Belair notes that if the assembly operations took place in a NAFTA country, the watch bands would change classification under the NAFTA Marking Rules and be considered a product of that country. While the NAFTA Marking Rules do not apply to products from the USVI, Belair argues that such rules should be consulted for Customs position as to whether the watch band undergoes a substantial transformation.

We have reconsidered our position in HRL's 733533, 734565 and other cases cited below, and we now are of the opinion that the assembly in the USVI of a watch strap, band or bracelet ("watch strap") to a watch made in the USVI results in a substantial transformation of the watch strap, and bracelet in the USVI.

In HRL 559558 dated December 14, 1995, Customs determined that imported rubber tires underwent a change in name, character and use in the U.S. and thus were substantially transformed as a result of an assembly operation performed to make wheel assemblies for complete or partially assembled garbage receptacles. We found in that case that after the operation the tire had a new name, "wheel assembly," recognizable as having a different use from that of the rubber tire. The character of the imported tire also changed as a result of being assembled to the U.S. origin wheel hubs. Prior to assembly it was a rubber tire, but after assembly in the U.S. with U.S-made components it became an essential component of

a wheel assembly part of a garbage receptacle. *See* also HRL 954158 dated March 29, 1994, where we relied on *Belcrest Linens* and found that electronic components used to make a pulse transformer lost their identity and become an integral part of the new article. In that case, we pointed out that the ultimate use and essential character of the pulse transformers was determined by the operations in the country of assembly. Thus, the components did not serve any function until assembled into the pulse transformer.

In the instant case, we note that as a separate component, the watch band does not serve the function for which it was intended, but when assembled with the watch, the two components operate as a wristwatch. If this assembly takes place in the country in which the watch was produced, the production of the finished wristwatch cannot be stated to have resulted from a "simple assembly." *See*, e.g., 19 CFR 10.195(a)(2). Moreover, it cannot be disputed that the essential character of the wristwatch is imparted by the watch. *See Uniroyal, Inc., v. United States*, 3 C.I.T. 220 (1982).

Additional U.S. Note 2, Chapter 91, Harmonized Tariff Schedule of the United States (HTSUS), provides that watch straps, bands and bracelets entered with wrist watches, whether or not attached, are classified with the watch in heading 9101 or 9102. Otherwise, watch straps, bands and bracelets are classified separately in heading 9113. While a change in a tariff classification is not in itself dispositive of whether the processing has resulted in a substantial transformation, it is supportive of a substantial transformation when the component undergoing the change in classification does not impart the essential character to the finished good.

After review of these authorities and the facts in this case, Customs is now of the opinion that when attached in a country to a watch produced in that same country, watch straps lose their identity and become an integral part of the finished watch. *See Belcrest Linens, supra.* Customs believes that under these circumstances the watch straps undergo a substantial transformation, as a result of a change in name, use and character. Therefore, in the instant case, the watch bands assembled with their watches do not have to be marked as they are considered to be a product of the USVI, a U.S. insular possession. *See* 19 CFR 134.32(l).

Holding:

Watch bands undergo a substantial transformation as a result of being assembled with their watches in the country in which the watches are produced. Accordingly, as the country of origin of the imported watches is the USVI, a U.S. insular possession, the watches along with their bands are excepted from the marking requirements. *See* 19 CFR 134.32(l).

The following rulings are modified to the extent Customs has stated or held, based on the applicable facts, that watch straps assembled with their watches in the country in which the watches are produced must be marked with their country of origin, if different than the country of origin of the watch. HRL 733533 dated August 3, 1990; HRL 734565 dated October 16, 1992; HRL 735297 dated January 26, 1994; HRL 735197 dated January 4, 1994; HRL 558657 dated August 16, 1994; and HRL 560202 dated December 20, 1996.

SANDRA L. BELL,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF PH AND OTHER TEST INDICATOR STRIPS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of pH and other test indicator strips. Customs invites comments on the correctness of the proposed revocation.

DATE: Comments must be received on or before February 20, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Edward A. Bohannon, Senior Attorney, Commercial Rulings Division, (202) 927–1613.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of pH and other test indicator strips as more fully described in this notice and the attachments (A through E) hereto. Customs invites comments on the correctness of the proposed revocation.

In Ruling Letter HQ 952706, issued on July 19, 1993, Customs ruled that pH and other test indicator strips were classifiable as other articles of paper in subheading 4823.90.8500, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). HQ 952706 is set forth in "Attachment A" to this document.

In Ruling Letter HQ 953405, issued on May 3, 1994, Customs held that certain test strips similar in composition to pH test strips were classifiable in subheading 3822.00.5090, HTSUSA, a provision for composite diagnostic or laboratory reagents, other than those of heading 3002 or 3006, other than those containing antigens or antisera. HQ 953405 is set forth in "Attachment B" to this document. To this same

effect, Customs issued HQ 956567 on July 19, 1994. HQ 956567 is set forth in "Attachment C" to this document. In HQ 088196 dated December 8, 1992, Customs held that certain blood diagnostic test strips containing antigens or antisera were classifiable in subheading 3822.00.1090, HTSUSA. This ruling is set forth at "Attachment D" to this document.

Customs finds that pH and other test indicator strips containing antigens or antisera are properly classifiable in subheading 3822.00.1090, HTSUSA, a provision for composite diagnostic and laboratory reagents, other than those of heading 3002 or 3006, not containing methyl chloroform or carbon tetrachloride, and that pH and other test indicator strips not containing antigens or antisera are properly classifiable in subheading 3822.00.5090, HTSUSA, a provision for composite diagnostic and laboratory reagents, other than those of heading 3002 or 3006, other than those containing antigens or antisera and not containing methyl chloroform or carbon tetrachloride. To avoid confusion as to the proper classification of these goods, Customs believes that HQ 952706 should be revoked.

Customs intends to revoke HQ 952706 to reflect the proper classification of pH and other test indicator strips in heading 3822, HTSUSA. Before taking this action, we will give consideration to any written comments timely received. Proposed Headquarter Ruling Letter HQ 958186 revoking HQ 952706 is set forth as "Attachment E" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 C.F.R. 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: December 30, 1997.

MARVIN AMERNICK,
(for John A. Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, July 19, 1993.

CLA-2 CO:R:C:T 952706 jlj
Category: Classification
Tariff No. 4823.90.8500

DISTRICT DIRECTOR OF CUSTOMS
55 Erieview Plaza
Cleveland, OH 44144

Re: Decision on application for review of Protest No. 4102-92-100090; classification of PH and other indicator strips.

DEAR SIR:

This is in response to your liquidation of certain entries covering PH indicator strips and similar strips produced in West Germany. Counsel for the protestant, EM Science Inc. of Cincinnati, Ohio, has provided this office with samples of the PH indicator strips.

Facts:

Counsel for the protestant describes the instant merchandise as follows:

> EM's pH and indicator strips are made by mixing raw cotton linters in water to produce a slurry and then adding the reactive dye. During the slurring process, the dye is chemically bonded to the cotton linters. The slurry is then pressed on a paper machine to produce rolls of cotton linter indicator paper. The rolls of pressed cotton linter paper are applied to thin sheets of a polyester base and automatically cut to size.

Issue:

Are the instant articles classified as other articles of paper pulp in subheading 4823.90.1000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as other articles of cellulose wadding in subheading 4823.90.7000, HTSUSA, or as other articles of paper in subheading 4823.90.8500, HTSUSA?

Law and Analysis:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRIs), taken in order. GRI 1 provides that classification shall be according to the terms of the headings and any relevant section or chapter notes.

The instant merchandise is composed of two different components—*i.e.*, the chemically impregnated paper which would be classified in Chapter 48 and the plastic carrier classified in Chapter 39. HTSUSA. GRI 3(b), HTSUSA, states:

> 3. When goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
>
> * * * * * * *
>
> b. Mixtures, composite goods * * * made up of different components * * * shall be classified as if they consisted of the material or component which gives them their essential character * * *.

The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN) are the official interpretation of the nomenclature at the international level. EN VIII for GRI 3(b) states, in part:

> The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

In the case of the instant merchandise, the function of the plastic carrier strip is merely to hold the "active" part of the indicator strip—*i.e.*, the paper impregnated with chemicals. The function of the impregnated paper is to change color when inserted in a chemical, thereby revealing both the presence and the amount of the chemical for which the test is performed.

The role of the impregnated paper is far more significant than that of the plastic carrier strip, therefore the impregnated paper constitutes the essential character of the indicator strip.

Counsel argues that the instant merchandise is classified under the provision for other articles of paper pulp in subheading 4823.90.1000, HTSUSA. He contends that this is the most specific provision for the indicator strips. Customs classified the goods under the provision for other articles of paper, in subheading 4823.90.8500, HTSUSA.

Counsel's primary contention in the original protest was that even though the goods were processed on a paper making machine, they did not become paper because they did not undergo a finishing process which would convert that merchandise into paper. Accordingly, the indicator strips consist of pulp which has been made into an article form.

In a subsequent submission, counsel has taken the position that the merchandise is classifiable as webs of cellulose fibers, in subheading 4823.90.7000, HTSUSA.

Regarding this latter position, while Heading 4823 specifically names both types of merchandise, subheading 4823.90.7000 provides only for cellulose wadding. Webs of cellulose fibers are not *eo nomine* provided for at the subheading level and are, therefore, classifiable in subheading 4823.90.8500, the same basket provision under which Customs classified this merchandise.

In addition, the terms "cellulose wadding" and "webs of cellulose fibers" are defined in the EN for Heading 4803 as follows:

> Cellulose wadding consists of a creped web of cellulose fibres of open formation * * *.
>
> Webs of cellulose fibres (tissues) consist of a creped web of cellulose fibres of closed formation * * *.

Since the material from which the indicator strips have been made has not been creped, that material does not meet either of the definitions cited above.

The *Dictionary of Paper*, Fourth Edition (1980), defines "pulp" as "Fibrous material prepared from wood, cotton, grasses, etc., by chemical or mechanical processes for use in making paper or cellulose products."

Under the section on "Impregnated paper and paperboard" the General Explanatory Notes for Chapter 48, HTSUSA, state that "Impregnated papers * * * include * * * indicator papers such as litmus or pole-finding papers * * *."

The *Dictionary of Paper* defines "Indicator Papers" as synonymous with "Test Papers." "Test Papers" are defined as "Papers, usually unsized, that are impregnated with any of a variety of chemical reagents, and used for detecting the presence of certain substances in solutions or in gases and vapors by the appearance of color changes."

By further processing the pulp into paper, the manufacturer of the instant merchandise has converted the pulp into a test or indicator paper. As noted in the facts portion of this decision, counsel, in describing the indicator strips, refers to that merchandise as "indicator paper" and "cotton linter paper."

The General EN cited above define "paper" in brief as follows: "Paper consists essentially of the cellulosic fibers of the pulps of Chapter 47 felted together in sheet form." The indicator paper meets this definition, therefore classification as an article of paper pulp is incorrect.

In counsel's second brief, dated April 16, 1993, counsel for the protestant makes the additional claim that the manufacture of paper is a three-step process: (1) preparation of the pulp, (2) formation of the sheet or web, and (3) finishing. He argues that even if a product is manufactured by a paper making machine, as the instant cotton linter paper is, it does not constitute paper until it has been subjected to a finishing process, such as calendaring. Since the cotton linter paper has not been subjected to a finishing process, he claims that it is still merely paper pulp, and that it comes out of the paper making machine in the form of a web, and therefore the test indicator strips are classified as other articles of paper pulp in subheading 4823.90.1000, HTSUSA, or as other articles of cellulose wadding, in subheading 4823.90.7000, HTSUSA.

As clearly indicated in the *Dictionary of Paper* definition of "pulp," pulp is a fibrous material for use in making paper or cellulose products. Once the pulp has been subjected to a paper making process, as the instant paper pulp has, it ceases to be pulp.

Counsel further states that the Court of International Trade, in *Sulzer Escher Wyss, Inc. v. United States*, Slip Op. 93-113 (June 22, 1993), held that "Paper manufacture consists of stock preparation, web-formation, de-watering and finishing." Counsel points out that the Court said that calendaring is the principal finishing operation and that it changes the surface characteristics of the paper by changing its optical and strength characteristics.

In *Sulzer Escher Wyss, Inc. v. United States, supra*, the court divided finishing operations into two categories: converting operations (*e.g.*, slitting, rewinding, trimming, sorting, carting and packaging) and operations which change the surface of the paper. The court

specifically said that the first type of finishing operations were not part of the process of paper manufacture, thereby emphasizing that not all finishing operations are integral steps in making paper.

The court, in *Sulzer Escher Wyss, Inc. v. United States*, stated that "finishing" was part of paper manufacture. It did not state that paper could not exist without "finishing." In Customs view, pulp which has been processed in a paper making machine ceases to be pulp and becomes paper. The fact that the material must be further processed in order to be usable for a specific purpose does not detract from its identity as paper. Indeed, the court quoted the EN to Chapter 48 to the effect that "Paper *may* be finished by calendaring or supercalendaring * * *." [Emphasis added.]

The *Dictionary of Paper* defines "paper" generally as "the name for all kinds of matted or felted sheets of fiber (usually vegetable, but sometimes mineral, animal or synthetic) formed on a fine screen from water suspension." The instant cotton linter paper meets this definition. We note that the *Dictionary of Paper* makes no mention of any need for paper to be subjected to a finishing process in order to constitute paper.

Chapter 48, HTSUSA, covers paper and paper articles. The General EN for Chapter 48 also indicate that it is not necessary to subject paper to finishing processes for it to be classified as paper in Chapter 48. As stated above, the General EN to Chapter 48 state that "Paper consists essentially of the cellulosic fibers of the pulps of Chapter 47 felted together in sheet form." No mention is made of the necessity of any finishing process.

The General EN also state that "the most commonly used method of making paper by machine is the Fourdrinier process." The process of making hand-made paper is also described, and it too neglects any mention of the necessity for finishing processes to occur in order to make hand-made paper.

Given the facts above, since the instant cotton linter paper is made from a paper pulp and is processed on a paper making machine, it constitutes paper. Once the paper pulp has been processed by the paper making machine, it is no longer paper pulp but paper. Therefore the test indicator strips cannot be classified as an article of paper pulp in subheading 4823.90.1000, HTSUSA.

Holding:

The instant PH and test indicator strips are classified as other articles of paper, in subheading 4823.90.8500, HTSUSA. The protest should be denied in full. A copy of this decision should be sent to the protestant along with the CF 19, Notice of Action.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 3, 1994.

CLA–2 CO:R:C:F 953405 EAB
Category: Classification
Tariff No. 3822.00.1090 and 3822.00.5090

R. BRIAN BURKE, ESQUIRE
RODE & QUALEY, ATTORNEYS AT LAW
295 Madison Avenue
New York, NY 10017

Re: Composite diagnostic and laboratory reagents; test strips or pads; HRL 088196.

DEAR MR. BURKE:

This is in reply to your letter dated February 10, 1993, in which you request on behalf of Boehringer Mannheim America a written ruling concerning the classification of certain composite diagnostic test strips under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Additional information was provided in your letter dated April 15, 1993 and during telephone conversations with this Office.

Facts:

Of three forms of goods to be classified, the first, Sample I, is a composite reagent test paper for use in the manufacture of urinalysis test strips. Imported in rolls 6 millimeters wide and more than 200 meters long, the paper has been treated with a chemical mixture that includes inert ingredients, buffer/s and at least one diagnostic reagent. Once imported, the rolls will be affixed to plastic and cut into strips for use in the further manufacture of urinalysis test pads *(see* following description of the third of three forms of goods at issue.)

The second, Sample II, is a composite reagent test foil for use in the manufacture of blood glucose test strips. As imported, the foil consists of a plastic sheet coated with a chemical mixture of diagnostic reagents that will indicate blood sugar level. Following importation, the sheet is cut into strips six millimeters wide for use by diabetics.

The third, Sample III, is a fully manufactured urinalysis test strip consisting of a group of pads of treated papers of Sample I attached to a plastic strip. In other words, several different papers of form one, each with its own chemical indicator, are attached to plastic, such that one pad may be used to analyze one urine sample for multiple, specific conditions, and several such pads are included on a given strip represented by Sample III.

Issue:

Whether paper or plastic or paper and plastic diagnostic test strips treated with or without antigen or antigen or antisera are classified under heading 4811, 4823 or 3822, HTSUSA.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUSA. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation as well as section and chapter notes are part of the HTSUSA and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order.

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System represent the official interpretation of the Customs Cooperation Council on the scope of each heading, and, although neither binding upon the contracting parties to the Harmonized System Convention nor considered to be dispositive interpretations, they should be consulted on the proper scope of the System.

Heading 3822 describes, *inter alia*, "composite diagnostic and laboratory reagents" and thereunder Customs has recently classified a plastic strip treated with an antigen and other chemicals. *See* HQ 088196 (December 2, 1991) (subheading 3822.00.1090, HTSUSA.)

We find that Sample II is classifiable according to the terms of heading 3822; no evidence of antigens or antisera being present, we are of the opinion that subheading 3822.00.5090, HTSUSA, a provision for composite diagnostic or laboratory reagents other than those containing antigens or antisera, other, is descriptive of Sample II.

Heading 4811 describes, *inter alia* and with exceptions not applicable to this decision, "impregnated paper." The General Explanatory Note to Chapter 48, pertaining to impregnated paper and paperboard, states

> Most * * * are obtained by treatment with oils, waxes, plastics, etc., in such a manner as to * * * give them special qualities (e.g., to render them waterproof, greaseproof, and sometimes translucent or transparent.) They are used largely for protective wrapping or as insulating materials.

We find that neither Sample I nor Sample III is "impregnated paper" of heading 4811.

Heading 4823 describes, *inter alia*, "other paper" and "other articles of coated paper". The General Explanatory Note to Chapter 48, pertaining to coated paper and paperboard, states

> This term applies to paper or paperboard which has been given a coating on one or both sides either to produce a specially glossy finish or to render the surface suitable for particular requirements.

We find that neither Sample I nor Sample III is "coated paper" of heading 4823.

We are of the opinion that classification of merchandise represented by Samples I and III is governed by the principle announced in GRI 1, *i.e.*, according to the terms of the headings

of the tariff schedule. Heading 3822, a provision for *composite* diagnostic or laboratory reagents, describes Samples I and III.

Holding:

Merchandise represented by Sample II is diagnostic or laboratory composite reagents containing an antigen, whether or not on a backing, such as forms one and three described in the FACTS hereinabove, are classifiable under subheading 3822.00.1090, HTSUSA, a provision for composite diagnostic or laboratory reagents, other than those of heading 3002 or 3006; containing antigens or antisera; other, and are to be entered free of duty.

Diagnostic or laboratory composite reagents not containing an antigen, such as form two described in the FACTS hereinabove, are classifiable under subheading 3822.00.5090, HTSUSA, a provision for composite diagnostic or laboratory reagents, other than those of heading 3002 or 3006; other; other, and are dutiable at the column one general rate of 5 percent *ad valorem*.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, July 19, 1994.

CLA–2 CO:R:C:F 956567 EAB
Category: Classification
Tariff No. 3822.00.5090

R. BRIAN BURKE, ESQUIRE
RODE & QUALEY, ATTORNEYS AT LAW
295 Madison Avenue
New York, NY 10017

Re: "Chemstrip bG"; "Chemstrip 9U"; composite diagnostic and laboratory reagents; test strips or pads; HRL 953405; "Micral".

DEAR MR. BURKE:

This is in further reply to your letter dated May 10, 1994, on behalf of Boehringer Mannheim America, and recent telephone conversations with this Office, which, taken together, we consider to be a request for a written ruling concerning the classification of certain composite diagnostic test strips known as "Chemstrip bG" and "Chemstrip 9U" under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Facts:

"Chemstrip bG" is a fully manufactured paper or foil backed composite diagnostic or laboratory reagent that indicates blood sugar level. It does not contain antigens or antisera.

"Chemstrip 9U" is a fully manufactured paper or foil backed composite diagnostic or laboratory reagent that is used in urinalysis. It does not contain antigens or antisera.

Issue:

What is the classification of diagnostic or laboratory test strips known as "Chemstrip bG" and "Chemstrip 9U"?

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUSA. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation as well as section and chapter notes are part of the HTSUSA and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order.

Heading 3822 describes, *inter alia*, "composite diagnostic and laboratory reagents" and thereunder Customs has recently classified a plastic strip treated with an antigen and other chemicals. *See* HQ 088196 (December 2, 1991) Subheading 3822.00.1090, HTSUSA), and HQ 953405 (May 3, 1994) ("Micral" test strips containing antigens or antisera, subheading 3822.00.1090, HTSUSA).

No evidence of antigens or antisera being present, we are of the opinion that subheading 3822.00.5090, HTSUSA, a provision for composite diagnostic or laboratory reagents other than those containing antigens or antisera, other, is descriptive of "Chemstrip bG" and "Chemstrip 9U".

Holding:

"Chemstrip bG" and "Chemstrip 9U" are classifiable under subheading 3822.00.5090, HTSUSA, a provision for composite diagnostic or laboratory reagents, other than those of heading 3002 or 3006; other; other, and are dutiable at the column one general rate of 5 percent *ad valorem*.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, December 8, 1992.

CLA–2 CO:R:C:F 088196 SLR
Category: Classification
Tariff No. 3822.00.1090

KATHLEEN M. MURPHY, ESQ.
KATTEN, MUCHIN & ZAVIS
525 West Monroe Street
Suite 1600
Chicago, IL 60606–3693

Re: Blood diagnostic test strips; composite diagnostic or laboratory reagents of Heading 3822, HTSUSA; composite diagnostic or laboratory reagents containing antigens or antisera of Subheading 3822.00.10, HTSUSA.

DEAR MS. MURPHY:

This is in response to your letter of November 6, 1990, written on behalf of your client, MediSense, Inc., requesting the classification of certain glucose test strips under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). A sample was submitted for our examination.

Facts:

The merchandise at issue consists of glucose test strips designed for use with the MediSense Exactech Blood Glucose Monitoring System. Diabetics use the system to monitor their blood glucose levels.

The test strips are made of plastic and contain glucose oxidase, along with other ingredients which are proprietary. Each test strip has a target area whereupon droplets of human blood combine with the glucose oxidase and the other ingredients to produce electrical microcurrents. The ExacTech Meter measures these currents and displays a digital read-out of the user's glucose level.

In your letter, you posit that the merchandise in question is classifiable in heading 3822, HTSUSA, the provision for diagnostic or laboratory reagents other than those of heading 3002 or 3006. Furthermore, you maintain that the test strips are classifiable in subheading

3822.00.10, HTSUSA, the provision for diagnostic or laboratory reagents. other than those of heading 3002 or 3006, containing antigens or antisera. You insist that glucose oxidase qualifies as an antigen.

You and several of your colleagues have met with Customs Headquarters personnel to discuss the instant case. You have since forwarded numerous submissions containing information designed to bolster your position that glucose oxidase is an antigen.

Issue:

What is the proper classification of the glucose test strips under the HTSUSA?

Law and Analysis:

Customs agrees that the glucose test strips are classifiable in heading 3822, HTSUSA, the provision for composite diagnostic or laboratory reagents. The question is whether the test strips contain "antigens" for the purposes of subheading 3822.00.10, HTSUSA.

Subheading 3822.00.10, HTSUSA, provides, in pertinent part, for composite diagnostic or laboratory reagents containing antigens. Neither the Harmonized Tariff Schedule nor the Explanatory Notes offers guidance in what constitutes an "antigen" for tariff purposes. As a result, reference must be made to dictionaries and other lexicographic sources.

According to *Taber's Cyclopedic Medical Dictionary*, (13th ed. 1979), at p. A-97, an antigen is a substance which induces the formation of antibodies. Taber's defines "antibodies" as protein substances developed by the body, usually in response to the presence of an antigen which has been administered parenterally or has otherwise gained access to the body.

Customs has not been persuaded that glucose oxidase is an antigen. Nonetheless, your most recent submission has provided Customs with information regarding the reactive qualities of the test strips' other ingredients; and, on this basis, we acknowledge the presence of an antigen on the test strips. Accordingly, the test strips are classifiable in subheading 3822.00.10, HTSUSA.

Holding:

The glucose test strips are classifiable in subheading 3822.00.1090, HTSUSA, which provides for composite diagnostic or laboratory reagents, other than those of heading 3002 or 3006: Containing antigens or antisera, other (than containing methyl chloroform (1,1,1-trichloromethane) or carbon tetrachloride).

Merchandise classifiable in subheading 3822.00.1090, HTSUSA, may enter the United States duty free.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 958186 EAB
Category: Classification
Tariff No. 3822.00.5090

PORT DIRECTOR
U.S. CUSTOMS SERVICE
6747 Engle Road
Middleburg Heights, OH 44130

Re: PH and other test indicator strips; HQ 952706: HQ 953405; HQ 956567.

DEAR DIRECTOR:

This is in response to your memorandum dated April 11, 1995, forwarding a request for Internal Advice dated February 24, 1995, from counsel for EM Industries, Inc., concerning the classification under the Harmonized Tariff Schedule of the United States (Annotated) (HTSUSA) of pH and other test indicator strips. We regret the delay.

Facts:

The merchandise is known commercially as ColorpHast® pH Indicator strips, which strips consist of non-bleeding indicator dyes bonded to cellulose and are used to test for pH levels between 0 and 14, inclusive.

Issue:

Whether pH and other test indicator strips are classifiable under the Harmonized Tariff Schedule of the United States (Annotated) (HTSUSA) as composite laboratory reagents or as articles of coated paper.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUSA. The tariff classification of such merchandise is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation. The GRIs and Additional U.S. Rules of Interpretation are part of the HTSUSA and are to be considered statutory provisions of law for all purposes.

In Headquarters Ruling Letter HQ 952706 dated July 19, 1993, Customs held that pH and other test indicator strips composed of chemically impregnated paper on a plastic backing were classifiable pursuant to GRI 3(b) in subheading 4823.90.8500, HTSUSA, a residual provision for articles of paper. Heading 3822, HTSUSA, a provision for diagnostic or laboratory reagents on a backing, and prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006, was not considered.

In HQ 953405 (May 3, 1994), Customs held that certain test strips similar in composition to pH and other test indicator strips were classifiable in subheading 3822.00.5090, HTSUSA, a residual provision for composite diagnostic or laboratory reagents other than those containing antigens or antisera. Therein, Customs noted that in HQ 088196 (December 8, 1992), Customs determined that heading 3822 "describes, *inter alia*, 'composite diagnostic and laboratory reagents'". Thus, in HQ 953405, Customs determined that, since heading 4823 described "other articles of coated paper", but heading 3822 described composite "diagnostic or laboratory reagents on a backing", the goods were properly classified pursuant to GRI 1 in heading 3822, HTSUSA. To this same effect, *see* HQ 956567 (July 19, 1994), classifying paper or foil backed composite diagnostic and laboratory test strips or pads containing antigens or antisera in subheading 3822.00.10, HTSUSA, and paper or foil backed composite diagnostic and laboratory test strips or pads not containing antigens or antisera in subheading 3822.00.5090, HTSUSA.

Customs finds that pH and other test indicator strips not containing antigens or antisera are classifiable in subheading 3822.00.5090, HTSUSA.

Holding:

PH and other test indicator strips containing antigens or antisera are classifiable in subheading 3822.00.10, HTSUSA, a provision for composite diagnostic or laboratory reagents, other than those of heading 3002 or 3006, containing antigens or antisera, and pH and other test indicator strips not containing antigens or antisera and not containing methyl chloroform or carbon tetrachloride are classifiable in subheading 3822.00.5090, HTSUSA, a provision for composite diagnostic or laboratory reagents, other than those of heading 3002 or 3006, other, other.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF A RULING LETTER RELATING TO TARIFF CLASSIFICATION OF "KICK SAC" FOOTBAGS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of "kick sac" footbags under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published on November 19, 1997, in the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Beth McLoughlin, General Classification Branch (202) 927–2404.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On November 19, 1997, Customs published a notice in the CUSTOMS BULLETIN, Volume 31, Number 47, proposing to revoke New York Ruling Letter (NYRL) A85392 dated July 16, 1996. No comments were received in response to this notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking New York Ruling Letter (NYRL) A85392 dated July 16, 1996, to reflect the proper classification of "kick sac" footbags under heading 9503, specifically, subheading 9503.90.0030, HTSUS, which provides for "Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; and accessories thereof: Other: Other, toys (except models), not having a spring mechanism." HRL 959885 revoking NYRL A85392 is set forth in Attachment A to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. §1625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: December 30, 1997.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, December 30, 1997.

CLA-2 RR:CR:GC 959885 MMC
Category: Classification
Tariff No. 9503.90.0030

MR. HERBERT J. LYNCH
SULLIVAN & LYNCH, P.C.
156 State Street
Boston, MA 02109

Re: NYRL A85392 revoked; Kick Sacks, foot bags.

DEAR MR. LYNCH:

On July 16, 1996, New York Ruling Letter (NYRL) A85392 was issued to your client CYRK Inc., in which we classified a footbag described as a "kick sac" under the Harmonized Tariff Schedule of the United States (HTSUS). In NYRL A85392 your client was advised that the kick sacs were classifiable under heading 9506, HTSUS, which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof." Upon further examination, we are of the opinion that this particular footbag known as a "kick sac" is properly classified in heading 9503, HTSUS, which provides for "Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof."

Pursuant to section 625(c)(1) Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, (Pub. L. 103–182, 107 Stat. 2057, 2186), notice of the proposed revocation of NYRL A85392 was published, on November 19, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 47. No comments were received in response to the notice.

Facts:

The foot bag, described as a "kick sac", consists of a ball shaped 2 paneled PVC shell which is filled with plastic pellets. It measures approximately 2 inches in diameter. It has the same texture or "feel" as a bean bag. The "kick sac" is imported by a company which manufactures and imports wearing apparel and promotional products. The purpose of the "kick sac" is to continually kick it and keep it from falling to the ground. This can be done alone or in a group. These "kick sacs" will be used as promotional items for a large company.

Issue:

Whether the footbags known as "kick sacs" are classifiable as sports equipment or as toys.

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS), is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The headings under consideration are:

9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof
9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive, or legally binding, provide a commentary on the scope of each heading, and are

generally indicative of the proper interpretation of the HTSUS. *See*, T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Although the term "toy" is not specifically defined in the tariff, the EN's to Chapter 95 state that:

> This Chapter covers toys of all kinds whether designed for the amusement of children or adults. It also includes equipment for indoor or outdoor games, appliances and apparatus for sports, gymnastics or athletics, certain requisites for fishing, hunting or shooting, and roundabouts and other fairground amusements.

Chapter 95 divides "toys" and "game equipment" into two separate headings, 9503 and 9506, respectively.

EN 95.03, states, in pertinent part, that:

> This heading covers:
>
> (A) All toys not included in headings 95.01 and 95.02. Many of the toys of this heading are mechanically or electrically operated.
>
> These include:
>
> * * * (8) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets, baseball bats, cricket bats, hockey sticks)* * *.

EN 95.06 states, in pertinent part, that:

> This heading covers:
>
> * * * (B) Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03), e.g.:
>
> * * * * * * *
>
> (3) Golf clubs and other golf equipment, such as golf balls, golf tees.
>
> (4) Articles and equipment for table-tennis (ping-pong), such as tables (with or without legs), bats (paddles), balls and nets.
>
> (5) Tennis, badminton or similar rackets (e.g., squash rackets), whether or not strung.
>
> (6) Balls, other than golf balls and table-tennis balls, such as tennis balls, footballs, rugby balls and similar balls (including bladders and covers for such balls); water polo, basketball and similar valve type balls; cricket balls * * *
>
> (8) Sticks and bats for hockey, cricket, lacrosse, etc.; chistera (jai alai scoops); pucks for ice hockey; curling stones.
>
> (9) Nets for various games (tennis, badminton, volleyball, football, basketball, etc.)
>
> * * * * * * *
>
> (14) Other articles and equipment, such as requisites for deck tennis, quoits or bowls; skate boards; racket presses; mallets for polo or croquet; boomerangs; ice axes; clay pigeons and clay pigeon projectors; bobsleighs (bobsleds), luges and similar non-motorised vehicles for sliding on snow or ice * * *.

As noted above, Chapter 95 divides "toys" and "game equipment" into two separate headings. As a result, a classification problem arises concerning the question of amusement. It is Customs position that, based on the exemplars of both ENs, for an article to be classifiable as a "toy" it must be used principally for amusement. Customs defines principal use as that use which exceeds each other single use of the article.

Toys may include balls which are imitations of the real thing or are not primarily used for sporting or athletic equipment. The distinction between the two rests significantly with the physical characteristics of the particular ball. Competitive "footbag" or "hacky sack" has reached a certain level of popularity and can be organized competition, both in sanctioned meets an in recreational "pick-up" games. Competitive footbags are designed in geometric patterns which give the article the proper consistency, shape, size and weight necessary for the sport. Competitive footbags are constructed with several panels, as many as 36. Furthermore, their shells are usually constructed of heavy, durable material such as leather or suede and are stitched together with strong, durable yarn. In contrast, the present "kick sacs" are constructed of PVC which deteriorates rapidly especially if used on rough surfaces. Furthermore, the ball only has 2 panels so it turns soft quickly thereby loosing its consistency.

The physical characteristics of these particular "kick sac" footbags indicates that they will be used as a source of fun, amusement and unique diversion, unfettered by serious competition or intense testing of ones skills and athletic ability. In the hands of the majority

of users these "kick sacs" are an entertaining throw or toss toy, much like a bean bag. We are of the opinion that these particular "kick sac" footbags cannot reasonably be used in the sport of footbag kicking because of their lack of durability and physical integrity. The "kick sac" footbag therefore, is properly classified as a toy in heading 9503, HTSUS.

Holding:

The "kick sacs" are classifiable under subheading 9503.90.0030, HTSUS, which provides for "Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; and accessories thereof: Other, Other: Other toys (except models), not having a spring mechanism," with a column one free rate of duty.

NYRL A85392 is revoked. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations [19 CFR 177.10(c)(1)].

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, December 22, 1997.

SUBJECT: INFORMED COMPLIANCE PUBLICATIONS

The philosophies of "informed compliance" and "shared responsibility" permeate the Customs modernization portion of the North American Free Trade Agreement Implementation Act (Title VI of Pub. Law 103–182). These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. In recognition of the complexity of importing and the value of adequate and timely information concerning importers' rights and obligations, the Customs Service has undertaken to provide the public with relevant information concerning its rights and responsibilities under Customs and related laws in a variety of formats. It is hoped that these efforts will assist the public in meeting its responsibility of using reasonable care to enter classify and value imported merchandise.

During 1996, the Customs Service developed and released its "Informed Compliance Strategy." This Strategy identifies my office as "Customs principal provider of technical information" and indicates that "distribution of such information, intended to assist the trade in exercising reasonable care, will be made through numerous channels in a variety of media." In support of Customs Informed Compliance Strategy, my office produces and posts electronic copies of informed compliance publications on the Customs Electronic Bulletin Board (CEBB) and on the Customs World Wide Web site. To assist users of these publications and in response to numerous requests for printed copies, we are reproducing in this Customs Bulletin copies of the Informed Compliance Publications in the "What Every Member of the Trade Community Should Know About: * * *" series that have been posted on our CEBB and Web site.

The topics addressed by these publications are:

Granite
Caviar
Distinguishing Bolts from Screws
Internal Combustion Piston Engines
Vehicles, Parts and Accessories
Articles of Wax, Artificial Stone and Jewelry
Tariff Classification Under The Harmonized Tariff Schedule
Classification of Festive Articles

In addition to these 1997 Informed Compliance Publications, Customs issued the following Informed Compliance Publications during 1996, which were reprinted in the January 2, 1997, Customs Bulletin

(Vol. 30/31, No.52/1) and are also available on the CEBB and the Customs Web site:

Customs Value
Buying and Selling Commissions
Bona Fide Sales and Sales for Exportation
NAFTA for Textiles and Textile Articles
Textile and Apparel Rules of Origin
Fibers and Yarn
Raw Cotton: Tariff Classification and Import Quotas
Marble
Mushrooms
Peanuts

Single copies of the January 2, 1997 Customs Bulletin may be obtained from the Office of Regulations and Rulings, Att: Thomas Budnik, Suite 3.4A, 1300 Pennsylvania Ave., NW, Washington, DC 20229, as long as limited supplies last.

Both the CEBB and the, Customs Web site were established to provide interested parties with free, current, and relevant information regarding Customs operations and items of special interest. Included are proposed regulations, Customs publications and notices, rulings, and news releases.

Access to the CEBB requires a PC, a modem, and a communications package set as an ANSI terminal with databits set to 8, stopbits set to 1, and parity set to None. The phone number to log on to the CEBB is (703) 921–6155. Questions regarding the CEBB should be addressed to the CEBB Administrator at (703) 921–6236. Users of the Internet's World Wide Web (WWW) may access Customs Web site 24-hours per day at http://www.customs.ustreas.gov/.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

What Every Member of the Trade Community Should Know About:

Granite

An Advanced Level
Informed Compliance Publication of the
U.S. Customs Service

February, 1997

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are ***"informed compliance"*** and ***"shared responsibility."*** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly cd-roms and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, recordkeeping, drawback, penalties and liquidated damages.

The National Commodity Specialist Division of the Office of Regulations and Rulings has prepared this publication on ***Granite*** as part of a series of informed compliance publications regarding the classification of imported merchandise. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs classification issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

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Introduction

When Queen Hatshepsut of ancient Egypt erected obelisks at the temple of Amun at Karnak, she selected granite as the ideal stone for this purpose. She said that granite would allow her name to "endure for eternity and everlastingness." Thus, from ancient times through the present day, granite has been prized for its strength and durability. From ancient times through the present day, it has been recognized as one of the world's most important monumental and building stones.

Granite is a coarse grained rock consisting largely of quartz and alkali feldspars (usually orthoclase; sometimes microline). While the principal ingredients of granite are alkali feldspars and quartz, it usually contains several other components as well, including biotite mica, muscovite mica and hornblende. Granite is known for its great strength and ability to take a high polish; consequently it is widely used in construction and as a monumental stone.

Igneous rocks are formed by magmas—molten mixtures of minerals found deep beneath the earth's surface. Intrusive igneous rocks (plutonic rocks) are formed by the cooling of magmas at a considerable depth beneath the earth's surface. On the other hand, extrusive igneous rocks are formed by magmas which have spilled out on the earth's surface (i.e., lava). Intrusive igneous rocks cool and solidify much more slowly than the extrusive igneous rocks formed on the surface. Granite is an intrusive igneous rock (a plutonic rock) formed by magma at some depth beneath the earth's surface.

Principles of Stone Classification

Stone is classified based on its mineralogical properties and physical form at the time of importation. Laboratory analysis to identify the geological nature of the stone and physical examination to determine the form of the merchandise are crucial to our determination of the applicable subheading in the Harmonized Tariff Schedule of the United States (HTS). The following are the basic principles of classification applicable to importations of stone.

I. Geological nature

Numerous Headquarters rulings have held that stone is classifiable based on geological definitions. Note rulings HQ 085266, 09–20–89; HQ 085968, 03–14–90; HQ 952679, 01–26–93; HQ 955738, 03–30–94; HQ 950057, 10–31–91; HQ 086894, 11–23–90; HQ 951525, 08–25–92. Therefore, any HTS subheading which refers to a particular stone by name will only cover products which conform to the geological definition of the stone. Often a product which may be called by the name of a specific stone in the trade (i.e., a "commercial" definition) fails to meet the geological definition for that stone; this type of item may not be classified under the HTS provision for the specific stone.

The Headquarters rulings which follow geological definitions are supported by the Explanatory Notes to the HTS which define stones in terms of their geological nature. Thus, the Explanatory Notes to head-

ing 2515, HTS, indicate that serpentine is not classified as marble even though it is often called "marble" in the trade, since serpentine and marble are geologically different.

Furthermore, the Explanatory Notes to heading 2516, HTS, indicate that ecaussine may not be classified as granite even though it is often called "granite" in the trade, since it is a geologically distinct stone. The Explanatory Notes to heading 2516 (as well as the language of the HTS) describe basalt and granite as distinct stones. Since basalt and granite are geologically different, they are classifiable separately even though basalt is often called "granite" in the trade. The Explanatory Notes to heading 2516 list syenite, gneiss, diabase and diorite as stones which are distinct from granite. Since these stones are geologically different from granite, they may not be classified as granite even though they are often called "granite" in the trade.

The Explanatory Notes to heading 6810, HTS, list examples of the types of stones which may be agglomerated with binders. These examples include marble, limestone and serpentine. By listing these stones separately, the Explanatory Notes indicate that marble, limestone and serpentine are regarded as distinct stones (because they are geologically distinct) even though limestone and serpentine are frequently called "marble" in the trade.

II. Form

Generally Chapter 25 covers crude stone and minerals, as well as stone and minerals worked in **very simple physical ways** (e.g., crushed, ground, powdered washed, etc.). Stone worked beyond the point allowable in Chapter 25 is classifiable in Chapter 68. Importations of worked stone classifiable in Chapter 68 are more common than importations of crude or slightly worked stone classifiable in Chapter 25.

III. Articles of precious and semi-precious stone

While monumental and building stone is classified in Chapters 25 and 68, precious or semiprecious stone is classifiable in Chapter 71.

The HTS and the Explanatory Notes indicate that articles of precious or semiprecious stone must be classified in Chapter 71. Note 1(d) to Chapter 68 and Note (1)(a) to Chapter 71 clearly indicate that Chapter 71 takes precedence over Chapter 68. Therefore, articles of precious or semiprecious stone must be classified in Chapter 71 rather than Chapter 68. The Annex to the Explanatory Notes for Chapter 71 lists items which we regard as precious or semiprecious stones.

GRANITE CLASSIFICATION ISSUES

The two crucial classification issues for granite involve the geological nature of the stone and the degree to which the stone has been worked. In the first part of this paper we will discuss the geological definition of granite; we will discuss stones which are geologically distinct from granite but often entered incorrectly as granite. Our initial presentation on geological distinctions will be within the context of the 6802.9

subheadings, since importations of stones classifiable in the 6802.9 provisions are the most common.

The second half of this paper will focus on the extent to which a stone has been worked. We will explain the distinction between the worked stone classifiable in Chapter 68 and the crude or slightly worked stone classifiable in Chapter 25. We will explain various distinctions between different subheadings within Chapter 25 which are based on the degree to which the stone has been worked. (During the course of our presentation on Chapter 25, we will also discuss geological distinctions within the context of that chapter.) In addition, we will discuss distinctions between different subheadings within Chapter 68 (6802.2 v. 6802.9) which are based on the manner in which the stone has been worked.

GEOLOGICAL DISTINCTIONS IN CHAPTER 68:

As explained above, numerous rulings issued by Customs Headquarters have held that geological definitions of stone must be followed under the HTS. In accordance with these rulings, only genuine granite may be classified as granite in subheading 6802.93.00, HTS.

Several stones which are geologically distinct from granite are often referred to as "granite" in the trade. These stones include basalt, diorite, gabbro, diabase (a.k.a. dolerite), syenite, gneiss and others. Although they are frequently referred to as "granite" in the stone industry and although they may be invoiced incorrectly as granite, these stones may not be classified as granite in subheading 6802.93 because they are geologically different from granite. While worked granite is classifiable in subheading 6802.93.00, worked basalt, gabbro, diorite, diabase, syenite and gneiss are classifiable as other stone in subheading 6802.99.00, HTS.

1) GRANITE (Subheading 6802.93) v. BASALT (Subheading 6802.99)

Although basalt is often referred to as "granite" or "black granite," it is geologically different from granite. **While basalt is a fine grained extrusive igneous rock formed from lava which has spilled out on the earth's surface, granite is a coarse grained plutonic rock (intrusive igneous rock) formed by magma at some depth beneath the earth's surface.** Plutonic rock cools and solidifies much more slowly than the extrusive igneous rocks formed on the surface.

While the principal ingredients in granite are alkali feldspars and quartz, basalt contains little or no quartz and alkali feldspars. The principal ingredient in basalt is plagioclase feldspar (usually labradorite or bytownite). Pyroxene (usually in the form of augite) is another important ingredient of basalt. In addition, basalt may contain magnetite, hematite, ilmenite, apatite and olivine. The dark to black color associated with basalt is created by the specific minerals within this stone.

Despite the fact that basalt is often referred to as "granite" or "black granite" in the trade, geologists regard basalt and granite as two distinct stones.

2) GRANITE (Subheading 6802.93) v. DIORITE, DIABASE AND GABBRO (Subheading 6802.99)

Diorite, diabase and gabbro are often referred to as "granite" in the trade; however, there is no question that these stones are geologically distinct from granite. Admittedly, these three stones are intrusive igneous rocks and granite is also an intrusive igneous rock. However, the composition of each of these rocks is very different from the composition of granite; therefore, they are regarded as different stones.

While quartz and alkali feldspars are the most important components of granite, **plagioclase feldspar is the most significant ingredient in gabbro, diorite and diabase.** The plagioclase within these stones is generally in the form of labradorite and/or bytownite. In some instances andesine or anorthite may also be present. These stones may also contain clinopyroxene, olivine, magnetite, ilmenite, chromite, apatite, sulfide, titanite, rutile, hornblende, allanite, orthopyroxene or other minerals.

Gabbro, diorite and diabase contain little or no quartz or alkali feldspars. In granite, the essential components are alkali feldspars and quartz; consequently, granite is geologically distinct from gabbro, diorite and diabase.

3) GRANITE (Subheading 6802.93) v. SYENITE (Subheading 6802.99)

Although syenite may be somewhat similar to granite in chemical composition, it is regarded as a different stone. Admittedly, alkali feldspars are significant components in both granite and syenite. Like granite, syenite is a coarse grained plutonic rock (an intrusive igneous rock). However, there is a crucial difference between these two stones which makes them geologically distinct.

The principal components in granite are quartz and alkali feldspars. The principal components in syenite are alkali feldspars. (Generally, syenite also contains plagioclase feldspars as well.) **Unlike granite, syenite generally contains little or no quartz. This distinction between granite and syenite makes them two different stones. Although syenite is sometimes referred to as "granite" in the trade, geologists regard granite and syenite as two geologically distinct entities.**

4) GRANITE (Subheading 6802.93) v. GNEISS (Subheading 6802.99)

Gneiss contains feldspars as well as mica (muscovite, phengite and biotite) and quartz. While granite is an igneous rock, gneiss is a metamorphic rock. Gneiss is developed from the metamorphosis of various stones which may include granite, shale, schist or other rocks. However,

gneiss itself is regarded as a distinct stone which is geologically different from granite.

Gneiss is characterized by compositional banding; it contains bands or layers of minerals which may be developed from different stones. In gneiss, the minerals are arranged in parallel layers with quartz and feldspars alternating with dark (ferromagnesian) minerals.

In those instances when gneiss is developed from granite, the gneiss is *recrystallized* granite. The process of recrystallization makes the gneiss a unique stone which is different from granite. Igneous rocks (like granite) and metamorphic rocks (like gneiss) are always regarded as geologically distinct.

The composition of gneiss is sometimes similar to the composition of granite (i.e., when granite metamorphoses into gneiss), although the alignment of the mica in these two stones is different. Like granite, gneiss generally contains abundant feldspars and quartz. However, even when gneiss has a similar chemical composition to granite, these two stones are geologically distinct. **Geological differences between stones are not based solely on differences in chemical composition; the physical differences between two stones can also indicate that they are geologically distinct.** When granite metamorphoses to form gneiss, a new geological entity has been created; this new rock is physically very different from granite although it has a similar chemical composition. **Since the physical forms of granite and gneiss are clearly different, geologists regard these items as different stones.**

Laboratory Analysis

Since basalt, gabbro, diorite, diabase, syenite, gneiss and other stones are often invoiced and entered incorrectly as granite, we send samples of products entered in subheading 6802.93 to the U.S. Customs laboratory for analysis. When the laboratory determines that a specific stone was entered incorrectly as granite in subheading 6802.93.00, HTS, the Import Specialist will issue a rate advance notice advising the importer that the merchandise will be classified as other stone in subheading 6802.99.00, HTS.

Chapter 25

The issues discussed above have been treated within the context of Chapter 68 of the HTS. **Generally Chapter 25 of the HTS covers crude stone and minerals, as well as stone and minerals worked in very simple physical ways** (e.g., crushed, ground, powdered, washed, etc.). See Note 1 to Chapter 25. Stone worked beyond the point allowable in Chapter 25 is classifiable in Chapter 68. Merchandise classifiable in Chapter 68 is often entered incorrectly in Chapter 25. Importations of stone classifiable in Chapter 68 are more common than importations of Chapter 25 stone.

The balance of this paper will discuss Chapter 25 of the HTS and the distinctions in classification which are based on the degree to which a stone has been worked. We will explain the distinction between Chapter 25 and Chapter 68, distinctions between various provisions within Chapter 25 as well as distinctions between various provisions within Chapter 68.

SUBHEADING 2516.11

Crude or roughly trimmed granite is classifiable in subheading 2516.11.00, HTS. Granite which has been "merely cut by sawing or otherwise into blocks or slabs of a rectangular shape" is classifiable in subheading 2516.12.00.

The Explanatory Notes to heading 2516 indicate that "the stones of this heading may be shaped and processed in the same ways as the stones of heading 25.15." Thus, the definitions of the terms referred to in subheadings 2516.11 and 2516.12 ("crude or roughly trimmed," "merely cut," etc.) may be found in the Explanatory Notes on subheadings 2515.11 and 2515.12. (Headings 2515 and 2516 deal with similar distinctions regarding the degree to which a stone has been worked.)

Based on the Explanatory Notes, "crude and roughly trimmed" granite covered by subheading 2516.11 is defined in the following manner. Crude stone includes "blocks or slabs which have been merely split along the natural cleavage planes of the stone."

The surfaces of these blocks or slabs "are often uneven or undulating and frequently bear the marks of the tools used to separate them (crowbars, wedges, picks, etc.)."

Crude granite in subheading 2516.11 also includes "unshaped stone (quarrystone, rubble) obtained by breaking out rocks from the quarry face (using picks, explosives, etc.)." These products have "uneven, broken surfaces and irregular edges" and "often bear the marks of quarrying (blast holes, wedge marks, etc.)."

Subheading 2516.11 also covers "waste of irregular shape arising from the actual extraction of the stone" within the quarry or from "subsequent working." (This includes "quarry stones, waste from sawing, etc.") Subheading 2516.11 is applicable assuming these pieces of stone are large enough to be used for cutting or construction. On the other hand, granite granules, chippings and powder would be classifiable in heading 2517.

"Roughly trimmed" granite covered by subheading 2516.11 is "stone which has been very crudely worked after quarrying to form blocks or slabs, still having some rough, uneven surfaces. This working involves removing superfluous protuberances by means of hammer or chisel-type tools."

SUBHEADING 2516.12

Subheading 2516.12.00 covers granite "merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape." The Explanatory Notes indicate that the blocks and

slabs covered by subheading 2516.12 "must bear discernible traces of the sawing (by wire strand or other saws) on their surfaces. If care was taken with the sawing, these traces may be very slight. In such cases, it is useful to apply a sheet of thin paper to the stone and rub it gently and evenly with a pencil held as flat as possible. This often reveals saw marks even on carefully sawn or very granular surfaces."

The Explanatory Notes indicate that subheading 2516.12 may also cover rectangular blocks and slabs of granite "obtained otherwise than by sawing, e.g., by working with a hammer or chisel." However, one must remember that **the type of sawing, cutting or working permitted for products classifiable in subheading 2516.12 is limited to the simple cutting or sawing associated with quarry stone (i.e., simple cutting from the quarry block). Any cutting which goes beyond simple cutting from the quarry block requires classification in Chapter 68.**

Geological Definitions in Chapter 25:

Subheading 2516.11 (granite—crude and roughly trimmed) and Subheading 2516.12 (granite—blocks/slabs) v. Subheading 2516.90 (other stone—including basalt, gabbro, diorite, diabase, syenite, gneiss, etc.)

Crude or roughly trimmed basalt, gabbro, diorite, diabase, syenite and gneiss are classifiable as other monumental or building stone in subheading 2516.90.00. These stones may not be classified as crude or roughly trimmed granite in subheading 2516.11.00, since they are geologically distinct from granite.

When basalt, gabbro, diorite, diabase, syenite or gneiss is merely cut by sawing or otherwise into blocks or slabs of a rectangular shape, the merchandise is classifiable in subheading 2516.90.00. Since these stones are geologically distinct from granite, subheading 2516.12.00 is not applicable.

Since products are often entered incorrectly as granite, we frequently send samples of merchandise entered in subheadings 2516.11 and 2516.12 to our laboratory for analysis. When laboratory analysis reveals that a particular stone has been entered incorrectly as granite, the Import Specialist will issue a rate advance notice advising the importer of the correct classification.

Chapter 25 *v.* Chapter 68

Generally, the permissible methods of working stone and minerals within Chapter 25 are listed in Note 1 to Chapter 25. According to this note, Chapter 25 only covers crude products or items which have been washed, crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallization). Note 1 indicates that Chapter 25 does not cover items which have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.

Please note that there are exceptions to the general rules indicated in Note 1 to Chapter 25. In some instances, the context of a particular Chapter 25 heading indicates that merchandise may be worked beyond the scope permitted in Note 1. (The heading may refer to merchandise which by its very nature must have been subjected to a particular process not provided for in Note 1, or the heading may refer directly to specific processes or conditions which go beyond the scope of Note 1.) Secondly, a limited number of specific items listed in Note 4 to Chapter 25 may be classified in heading 2530 although worked beyond the scope permitted in Note 1. These exceptions are not relevant to our discussion of monumental and building stone in this paper.

Regarding the classification of monumental and building stone, any cutting which goes beyond simple cutting from the quarry block requires classification in Chapter 68. Thus, **precision cutting, edge working or any cutting or working other than the simplest cutting associated with the quarry would preclude classification in Chapter 25.**

The following operations dictate classification in Chapter 68:

1) Honing and other operations designed to create a smooth or flat surface
2) The same operations applied to the edges of a stone
3) Polishing applied to either the face or edges of the stone
4) Bossing, dressing, grinding, chamfering, molding, carving, etc.

All working which goes beyond the simplest cutting associated with the quarry shifts the classification of stone from Chapter 25 to Chapter 68. Stone is classifiable in Chapter 25 when it is merely shaped "by splitting, rough cutting or squaring, or squaring by sawing." However, any stone worked beyond this point is classifiable in Chapter 68. See Explanatory Notes to Chapter 68.

According to the Explanatory Notes, heading 2516 only covers stone "in the mass or roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square shape)...Blocks, etc., which have been further worked, i.e., bossed, dressed with the pick, bushing hammer or chisel, etc., sand-dressed, ground, polished, chamfered, etc., are classified in heading 68.02. The same classification applies to blanks of articles."

HEADING 6802

Heading 6802 provides for worked monumental and building stone and articles thereof. The Explanatory Notes to heading 6802 indicate that natural monumental or building stone "worked beyond the stage of the normal quarry products of Chapter 25" is classifiable in heading 6802. "The heading therefore covers stone which has been *further processed* than mere shaping into blocks, sheets or slabs by splitting, roughly cutting or squaring, or squaring by sawing (square or rectangular faces)."

The Explanatory Notes indicate that **heading 6802 covers stone "in the forms produced by the stone-mason, sculptor, etc." These forms include "roughly sawn blanks" and "non-rectangular sheets** (one or more faces triangular, hexagonal, trapezoidal, circular, etc.)." **In addition, these forms include "stone of any shape (including blocks, slabs or sheets), whether or not in the form of finished articles, which has been bossed** (i.e., stone which has been given a rock faced finish by smoothing along the edges while leaving rough protuberant faces), **dressed with the pick, bushing hammer, or chisel, etc., furrowed with the drag-comb, etc., planed, sand dressed, ground, polished, chamfered, moulded, turned, ornamented, carved, etc."**

In addition to worked monumental and building stone, heading 6802 covers articles of monumental and building stone (except for articles of precious or semiprecious stone classifiable in Chapter 71).

SUBHEADING 6802.23 *v.* SUBHEADING 6802.93

Within heading 6802, there is a distinction between subheadings which begin with the numbers 6802.2 and subheadings which begin with the numbers 6802.9. **The 6802.2 subheadings cover "monumental or building stone, and articles thereof, simply cut or sawn, with a flat or even surface." Monumental or building stone worked beyond this point is covered by the 6802.9 subheadings.**

Subheading 6802.23.00 provides for granite "simply cut or sawn, with a flat or even surface." Subheading 2516.12.00 covers granite "merely cut, by sawing or otherwise, into blocks of a rectangular (including square) shape." What is the distinction between the cutting or sawing referred to in Chapter 25 and the cutting or sawing referred to in Chapter 68? As explained above, the cutting or sawing referred to in Chapter 25 is the type of simple cutting associated with quarry stone.

Stone classifiable in heading 2516 may be obtained by blasting from a large quarry block or by cutting from the block. This stone may have surfaces which are obviously irregular. Even when obtained by cutting from the quarry block, stone of heading 2516 will not have perfectly smooth surfaces. **Merchandise classifiable in subheading 2516.12 "must bear discernible traces of the sawing"** (although these traces may be slight in some instances). **On the other hand, granite classifiable in subheading 6802.23 will have "a flat or even surface" (i.e., a surface which has been smoothed).** Subheading 6802.23 applies to granite cut or sawn in a manner which goes beyond the cutting from the quarry block associated with Chapter 25 merchandise.

While subheading 6802.23 covers granite simply cut or sawn, with a flat or even surface, subheading 6802.93 covers granite worked beyond this point. Thus, granite which has been polished, beveled, edge worked, carved, molded, ornamented or worked in nu-

merous other ways is classifiable in subheading 6802.93. All operations which go beyond cutting or sawing dictate classification in subheading 6802.93, rather than subheading 6802.23.

When "simply cut or sawn, with a flat or even surface," basalt, gabbro, diorite, diabase, syenite and gneiss are classifiable in subheading 6802.29.00 as other stone. These stones may not be classified as granite in subheading 6802.23 because they are geologically different from granite. **When basalt, gabbro, diorite, diabase, syenite and gneiss are worked beyond the point of simple cutting or sawing, they are classifiable as other stone in subheading 6802.99.**

THE IMPORTER'S RESPONSIBILITIES

Since the enactment of the Customs Modernization Act in December 1993, the legal burden of correctly classifying merchandise has shifted from the Customs Service to the importer. The importer of record is responsible for determining a particular stone's geological nature prior to the importation and entry of the merchandise. When an importer or broker is aware (e.g., by receipt of a rate advance notice) that a particular stone is geological basalt, gabbro, diorite, diabase, syenite or gneiss (rather than granite), he or she must enter the merchandise under the appropriate provision for other stone despite the fact that the foreign supplier may refer to product as "granite." **Moreover, the importer shall advise the supplier that the merchandise is actually basalt, gabbro, diorite, diabase, syenite or gneiss. The importer should encourage the shipper to invoice the item correctly based on its geological nature and discourage its inaccurate description as "granite."**

In addition to the importer's responsibility regarding the geological nature of the stone which is being imported, he or she must be aware of the exact manner in which the stone has been worked. Prior to the importation and entry of the merchandise, the importer must determine the precise manner in which the stone has been worked. The importer must obtain this information from the foreign supplier and advise the supplier to include the information on the invoice.

Furthermore, the importer must be familiar with distinctions between merchandise classifiable in heading 6802 and merchandise classifiable in Chapter 25. An importer must determine whether the stone has been cut or sawn in a manner which takes it beyond the scope of Chapter 25. **One must also be aware of the distinctions (based on the degree to which the stone has been worked) between different subheadings within heading 6802 and different subheadings within Chapter 25.**

If the importer is not certain regarding other matters which are pertinent to the classification of the merchandise, he or she may request a binding ruling on the item before it is impor-

ted. A ruling request on stone should include information on the exact manner in which the stone has been worked as well as a sample of the item. If the product is too large to submit, the importer should submit a portion of the stone which includes sections of the face as well as the side (or edge) and corner. Based on our laboratory analysis of the sample, we will advise the importer regarding the correct classification for the item.

If the importer wishes to determine the classification of a large number of stone products prior to importation, he or she may request a preclassification ruling covering the line of products. Samples of all the items should be submitted since our lab analysis is crucial to the classification of the merchandise. In addition, a request for a preclassification ruling should include detailed information on the manner in which each stone was worked.

Invoicing Requirements

The accuracy of the information contained on invoices is an essential element of many new Customs programs. These programs (including, but not limited to automated entry processing and preimportation review) may provide their benefits to the trade community as a whole only if the data gathered is correct and complete. This concern for invoice accuracy is not new; however, as we progress in automation, accuracy becomes indispensable.

Pursuant to Section 141.86 of the Customs Regulations [19 C.F.R. 141.86(a)(3)], the specific answers to the following questions are essential and should appear on invoices for granite or other stones:

1) What is the geological nature of the stone? (i.e., Based on geological definitions, is it granite or is it another stone such as basalt, gabbro, diorite, diabase, syenite or gneiss?) Invoicing stone simply as "granite" is improper unless the item is geological granite.

2) What is the brand name and/or style number of the stone?

3) Is the product an article, crude or roughly trimmed stone, crushed or ground stone, an unworked slab, a worked slab, etc.? [Indicate the exact form of the imported stone.]

4) Has the stone been simply cut from the quarry block or has it been further worked? Has it been precision cut, honed, edge worked, beveled, bossed, dressed with a tool, furrowed, sand dressed, planed, ground, polished, chamfered, molded, turned, ornamented, carved, etc.? [Indicate the precise extent to which the stone has been cut or worked. All operations applied to either the face or the edges of the stone should be described exactly.]

5) What is the area and thickness of the product?

Additional Information

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service

as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. To use the CEBB, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 440–6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 440–6236.

The Internet

The Customs home page on the Internet's World Wide Web—which began public operation on August 1, 1996—will also provide the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The home page will post timely information including proposed regulations, news releases, Customs publications and notices, *etc.*, which may be printed or "downloaded" to your own PC. Not all features may be available in the beginning. The Customs Service does not charge the public for this service, although you will need Internet access to use it. The Internet address for Customs home page is **http://www.customs.ustreas.gov**.

Customs Regulations

The current edition of *Customs Regulations of the United States,* in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1996 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1995 through March, 1996 is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions ("Customs Bulletin")* is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade and Customs related decisions of the U.S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The Customs Bulletin is available for sale from the Superintendent of Documents.

Video Tapes

The U.S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in understanding the new ***Rules of Origin for Textiles and Apparel Products*** which became effective on July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for $20.00 (U.S. funds) directly from the Customs Service. If you require further information, or would like to purchase one or more tapes, please forward your written request to: U.S. Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

Informed Compliance Publications

The U.S. Customs Service has also prepared other Informed Compliance publications in the *What Every Member of the Trade Community Should Know About:* series, which are available from the Customs Electronic Bulletin Board and the Customs Home Page (see above). As of the date of this publication, the following booklets were available:

- *Fibers and Yarns*
- *Buying and Selling Commissions*
- *NAFTA for Textiles and Textile Articles*
- *Raw Cotton*
- *Customs Valuation*
- *Textile and Apparel Rules of Origin*
- *Mushrooms*
- *Marble*
- *Peanuts*
- *Caviar*
- *Bona Fide Sales and Sales for Exportation*

Check the Customs Electronic Bulletin Board and the Customs Home Page for more recent publications.

Other Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§ 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. § 1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§ 152.000–152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

What Every Member of the
Trade Community Should Know About:

CAVIAR

An Advanced Level
Informed Compliance Publication of the
U.S. Customs Service

February 1997

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The National Commodity Specialist Division of the Office of Regulations and Rulings has prepared this publication on Caviar as one in a series. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this publication may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

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CAVIAR

WHAT CAVIAR IS

Caviar is the eggs or roe of sturgeon preserved with salt. It is prepared by removing the egg masses from freshly caught fish and passing them carefully through a fine-mesh screen to separate the eggs and remove extraneous bits of tissue and fat. At the same time, 4–6 percent salt is added to preserve the eggs and bring out the flavor. Most caviar is produced in Russia and Iran from fish taken from the Caspian Sea, the Black Sea, and the Sea of Azov.

Caviar is graded according to the size of the eggs and the manner of processing. The grades are named for the types of sturgeon from which the eggs are taken. The species of sturgeon (Family Acipenseridae) that produce caviar are, in order of size, beluga, osetra, and sevruga.

Lesser grades of caviar, made from broken or immature eggs, are more heavily salted and compressed. This payusnaya caviar (pressed caviar) is preferred by some because of its more intense flavor. Payusnaya is a coarser product, which consists mostly of roe that is premature or damaged in the sieving process. It is more heavily salted (10 percent), pressed in bulk, and shipped for canning elsewhere.

The Sturgeon

Sturgeons are fish of the Family Acipenseridae. The toothless sturgeon is one of the few surviving bony fish (the bones are soft and cartilaginous) which have retained their prehistoric appearance. Because their unique skeletal structure has distinct longitudinal bony plates on the outside, they have no bones in the flesh—a characteristic that gourmets welcome.

There are twenty-four existing sturgeon species worldwide. Five of them live in the Caspian Sea, and only three supply caviar. The three species of sturgeon that supply caviar are the beluga, the osetra, and the sevruga. These three give us 90 percent of the world's production.

TYPES OF CAVIAR

A) Beluga (Huso huso)

The beluga is the largest sturgeon and the only predator in the family. It is so rare that the annual beluga catch does not exceed 100 units. The beluga is strong, vigorous, large-mouthed, and nomadic, following its prey, shoals of whitefish. Beluga caviar, the largest, is light to dark gray. It is highly valued for its large granules (coarse roe) and delicate skin.

B) Osetra (Acipenser gueldenstaedtii colchicus)—also known as asetra, oscetra, ossetra, and ossetrova

The medium-sized sturgeon probes the sea bed with a projecting snout. The snout is elongate and there are four barbels on its lower surface. It is equipped to vacuum up plants and small forms of sea life.

Osetra caviar is dark brown-gray to golden. It is the only variety of caviar with a unique nut flavor.

C) Sevruga (Acipenser stellatus)

The sevruga is small, and it has a pointed snout with an upward tilt. The diamond-shaped exoskeletal plates are the most distinct in this species of sturgeon.

Sevruga caviar, the smallest, is greenish black and fine-grained.

How Caviar is Graded

The factors that are considered in the grading of caviar are the uniformity and consistency of the grain, the size, color, fragrance, flavor, the gleam, firmness and vulnerability of the roe skin.

A) Grade 1

Grade 1 caviar is caviar which ideally combines all properties: it must be firm, large grained, delicate, intact, of fine color and flavor.

B) Grade 2

Grade 2 caviar is also fresh caviar with normal grain size, very good color and fine flavor.

C) Pressed Caviar

In this grade, external effect caused the fracture of more than 35 percent of the roe skins before it was removed from the fish. Therefore, this caviar is treated in a different manner than grade 1 and grade 2 caviar. It consists of a roe blend from the osetra and sevruga. This blended roe, usually milky and soft, is heated to 38 degrees Centigrade in a saline solution and stirred until it has absorbed salt and regains its natural color. Then, it is cast into "talees," fabric pouches in which it is pressed out to remove excess salt and oil.

Pressed caviar contains four times more roe than fresh caviar of the same weight. It is drier, spreadable, and it is also considered to be a delicacy. Because it takes four pounds of fresh caviar to prepare one pound of pressed, the resulting black paste has a highly concentrated flavor. The strong, sharp taste is favored by some gourmets.

Summary of Grading for Caviar

Beluga Caviar

Grade 1

Large grain. Absolute top quality. In this category, the following additional color criteria apply:

000 light gray
00 medium gray
0 dark gray

Grade 2

Smaller grain. Medium to light gray.

Osetra Caviar

Grade 1

In this quality, osetra is distinguished by three colors:

Royal Caviar: Gold The rarest and most coveted caviar (general yield from osetra is 1:1,000)

Color A: gray gold
Color B: dark gray

Grade 2

Smaller grain. Medium gray.

Sevruga Caviar

Grade 1

Dark gray to light gray

Grade 2

Smaller grain. Dark gray

Pressed Caviar

PREPARATION OF CAVIAR

Fresh-grained caviar is prepared from the full roe of the female sturgeon. The sturgeons are caught in nets and taken back to the fishery laboratory alive. There they are clubbed and anesthetized, not killed, and the egg pockets are emptied. The fishermen carefully anesthetize the fish by hitting them at a specific spot below the head. The roe must be taken while the fish are still alive. If the fish experience the stress of death, they release a chemical into the eggs that spoils the caviar by making it bitter.

When beluga roe is taken from the fish to make the highest graded caviar, it is processed manually. The fish are placed on a coarse mesh screen spread across a wooden tub. The roe is removed by splitting the underside of the sturgeon with a sharp knife. Then the roe bags (filmy sacs containing the eggs) are broken by whipping them with birch switches. The freed roe is then passed over screens with varying-sized mesh to grade the eggs according to size. The roe is rubbed through the screens with the palm of the hand for optimum control. The process also separates the eggs from binding tissue.

During the process, the eggs drop into a tub below the mesh screens. After a portion of the eggs has been collected in the tub, it is transferred to a bucket and the process is repeated. Considerable care must be taken in rubbing the eggs through the screens, since bruising them results in a lower grade of caviar.

When all of the eggs have been collected, they are put into a tub and dry salt is added. The salt is thoroughly mixed with the roe. The eggs are then placed in a fine mesh screen to drain.

The caviar is packed in tin, glass or porcelain containers equipped with tight-fitting covers. It is then ready to eat or store under refrigeration.

Pasteurization

Some, not all, caviar is pasteurized. Pasteurization is effected by the immersion of the cans or jars of caviar in a hot-water bath at 155–160 degrees Fahrenheit for 30, 45, and 60 minutes for 1, 2, and 4 ounce con-

tainers, respectively. This treatment makes it possible to store caviar at temperatures as high as 60 degrees Fahrenheit for several months without off-flavors or decomposition resulting.

Special Requirements for Transport

The refrigerator, with its compartments for below freezing point storage, presents many dangers to the preservation of caviar. Once caviar has been frozen and then thawed out, the roe (berries) will have burst, the product will have become mushy, and the quality will have deteriorated to the lowest grade. In order to avoid having the berries burst, caviar must be refrigerated at 28 to 32 degrees Fahrenheit.

A prime requirement for top quality caviar is that each berry be well coated with its own glistening fat. One of the purchaser's concerns is that the fat in the caviar does not rise to the top of the can, to be scooped off by the vendor for a preferred customer, leaving less fatty berries for other, later buyers. The conscientious shipper sees to it that the caviar tins in the refrigerator are turned frequently during transport, in order to keep the fatty substance well distributed.

Classification of Caviar

The Harmonized Tariff Schedule of the United States (HTS) has an eo nomine provision for caviar in 1604.30.2000, HTS. The general most-favored-nation (MFN) rate of duty is 15 percent ad valorem (1996).

True caviar is roe that comes from the sturgeon. The Explanatory Notes to the Harmonized Commodity Description and Coding System defines caviar in Chapter 16 thus:

Caviar is prepared from the roe of the sturgeon, a fish found in the rivers of several regions (Italy, Alaska, Turkey, Iran and Russia); the main varieties are Beluga, Schirp, Ossiotr and Sewruga. Caviar is usually in the form of a soft, granular mass, composed of eggs between 2 and 4 mm in diameter and ranging in color from silver-grey to greenish-black; it has a strong smell and a slightly salty taste. It may also be presented pressed i.e: reduced to a homogeneous paste, sometimes shaped into small slender cylinders or packed in small containers.

Chapter 16 excludes fish roe that is still enclosed in the ovarian membrane, prepared or preserved only by processes provided for in Chapter 3.

Caviar of heading 1604.30.2000, HTS, may be entered free of duty, if the country of origin has been designated a beneficiary country under the Generalized System of Preferences (Russia is not eligible for duty-free treatment under GSP in 1996), the North American Free Trade Agreement, the Caribbean Basin Economic Recovery Act, the United States-Israel Free Trade Area or the Andean Trade Preference Act, upon compliance with all applicable regulations (1996).

The Column 2 rate of duty is 30 percent ad valorem (1996).

Classification of Caviar Substitutes

Roe that comes from a fish other than the sturgeon is not true caviar, and it is classifiable as a caviar substitute. For example, the eggs of lumpfish, whitefish and salmon may be prepared or preserved as caviar substitutes. Although the term "caviar" may appear on the commercial invoice, and the importer's price list may show the merchandise under a caviar heading, for Customs classification purposes, this roe is not caviar, but rather, a caviar substitute. Attention must be given to the name of the fish that is specified on the invoice.

The Explanatory Notes describe caviar substitutes thus:

These are products consumed as caviar but prepared from the eggs of fish other than sturgeon (e.g., salmon, carp, pike, tuna, mullet, cod, lumpfish), which have been washed, cleaned of adherent organs, salted and sometimes pressed or dried. Such fish eggs may also be seasoned and colored.

The HTS provides for caviar substitutes under two subheadings. If the caviar substitute has been boiled and packed in airtight containers, the applicable subheading is 1604.30.3000, HTS, which provides for prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs, caviar and caviar substitutes, caviar substitutes, boiled and in airtight containers. The general most-favored-nation (MFN) rate of duty is 1.5 percent ad valorem (1996).

Caviar substitutes of heading 1604.30.3000, HTS, which have been boiled and packed in airtight containers, if produced in designated countries, are eligible for duty free treatment under the North American Free Trade Agreement, the Caribbean Basin Economic Recovery Act, the United States-Israel Free Trade Area, and the Andean Trade Preference Act, upon compliance with all applicable regulations (1996).

The Column 2 rate of duty is 30 percent ad valorem (1996).

Caviar substitutes other than those which have been boiled and are in airtight containers are classifiable under subheading 1604.30.4000, HTS, which provides for prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs, caviar and caviar substitutes, caviar substitutes, other. The general MFN rate of duty is free (1996). The Column 2 rate of duty is 44 cents per kilogram (1996).

Invoicing Requirements

The accuracy of the information contained on invoices is an essential element of the structure of the many new and creative programs Customs has undertaken recently. These programs, including, but not limited to, automated entry processing and pre-importation review, may provide their benefits to the trade community as a whole, only if the data gathered is correct and complete. This concern for invoice accuracy is not new, but, as we progress in automation, accuracy becomes indispensable.

Section 141.86 of the Customs Regulations concerns invoicing requirements. Subparagraph (a)(3) of the section specifically requires that invoices have the following information:

"A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers and symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed."

A "detailed description" is one which enables an import specialist to properly classify imported merchandise. Accordingly, the invoice description must indicate any information which has a direct bearing on the proper classification of the imported item and it is incumbent upon the importer of record to ensure that the detailed description is present on each invoice.

Importers do not have to provide information that is not necessary to classify a specific item. However, they are responsible for giving the Customs Service the information that is needed.

The following information is required on all invoices for caviar:

1) a detailed description of the caviar or caviar substitute i.e: if caviar, the species of sturgeon (beluga, osetra, sevruga, or pressed caviar); if a caviar substitute, the common name and the scientific name of the fish
2) method of packing—size of the can or jar
3) unit value
4) total value of shipment
5) terms of sale
6) weight in pounds or kilograms
7) country of origin

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FURTHER INFORMATION

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, ruling-modification/revocations, quota threshold status, Mod Act or Informed Compliance publications and notices, Customs Directives, Trade Operations Instructions, NAFTA Information, Intellectual Property Rights (trademarks & copyrights), and antidumping and countervailing duty instructions, *etc.*, which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. To use the CEBB, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 440–6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, please send mail to Sue Coppola at COPPOLA@COPPOS09.customs.sprint.com, or call (703) 440–6236.

Alternatively, experienced Internet users may Telnet to the CEBB by following these steps:

How to Telnet to the U.S. Customs BBS via Fedworld

i. Open your telnet client and telnet to fedworld.gov
ii. Logon as new and create your FedWorld user account (if you are a new user)
iii. From the Options Menu, select Option 1 for FedWorld
iv. From the Fedworld Main Menu, select Option U for Utilities
v. At the Gateway Menu, select option D for the Gateway system
vi. At the Gateway Menu, select option D to connect to a Gateway system
vii. Enter the number 47 for the USCS-BBS
viii. Logon to the USCS-BBS

The Internet

The Customs home page on the Internet's World Wide Web—which began public operation on August 1, 1996—will also provide the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The home page will post timely information including proposed regulations, news releases, Customs publications and notices, *etc.*, which may be printed or "downloaded" to your own computer. Not all features may be available in the beginning. The Customs Service does not charge the public for this ser-

vice, although you will need Internet access to use it. The Internet address for the Customs home page is http://www.customs.ustreas.gov.

Customs Regulations

The current edition of *Customs Regulations of the United States*, in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1996 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Customs Regulations from April, 1995 through March, 1996 will be available for sale from the same address. All proposed and final regulations are published in *the federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions ("Customs Bulletin")* is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade and Customs related decisions of the U.S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The *Customs Bulletin* is available for sale from the Superintendent of Documents.

Video Tapes

The U.S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in understanding the new ***Rules of Origin for Textiles and Apparel Products*** which became effective on July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for $20.00 (U.S. funds) directly from the Customs Service. If you require further information, or would like to purchase one or more tapes, please forward your written request to: U.S. Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

Informed Compliance Publications

The U.S. Customs Service has also prepared other Informed Compliance publications in this series which are available from the Customs Electronic Bulletin Board (see above). Of particular interest to importers are:

What Every Member of the Trade Community Should Know About:

- *Fibers and Yarns*
- *Buying and Selling Commissions*
- *NAFTA for Textiles and Textile Articles*
- *Raw Cotton*
- *Customs Valuation*
- *Textile and Apparel Rules of Origin*
- *Mushrooms*
- *Marble*
- *Peanuts*
- *Bona Fide Sales and Sales for Exportation*
- *Caviar*

Check the Customs Electronic Bulletin Board and the Customs Home Page for more recent publications.

Other Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§ 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000–152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

READ ME!!!

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

What Every Member of the
Trade Community Should Know About:

Distinguishing Bolts from Screws

An Advanced Level
Informed Compliance Publication of the
U.S. Customs Service

May, 1997

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are ***"informed compliance"*** and ***"shared responsibility."*** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The National Commodity Specialist Division of the Office of Regulations and Rulings has prepared this publication on ***Bolts and Screws***, as part of a series of informed compliance publications regarding the classification of imported merchandise. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

TABLE OF CONTENTS

I. Introduction

The rate of duty on some screws is fourteen times higher than the rate of duty on bolts. The Customs Service uses fastener industry standards to distinguish bolts from screws. When a fastener is described in a fastener industry dimensional standard as either a screw or a bolt, we follow that standard. When we have no dimensional standard, we go to "Specification for Identification of Bolts and Screws," ANSI-ASME B 18.2.1 1981 (the "Specification"). The standard is full of industry jargon, so to make it easier to use, we have combined it here with illustrations and glossary terms from *Fastener Standards* 6th Edition, Industrial Fastener Institute, Cleveland, Ohio 44114, 1988. (That's our principle source, and if you don't have it, you are at a big disadvantage in classifying fasteners. This report is not meant to substitute for the book. Rather, it is intended to acquaint you with some of the book's contents.)

Here are a couple of helpful hints for applying the Specification. The Specification includes both primary and supplementary criteria. The primary criteria are easy enough to understand, but in applying the supplementary criteria a few things should be kept in mind.

FIRST, the supplementary criteria help you distinguish coarser (or loose tolerance) bolts from finer (or close tolerance) screws. When the supplementary criteria are applied, the coarser product usually turns out to be a bolt, the finer product usually turns out to be a screw. ("Coarse" and "fine" are looked at from nine different aspects of the screw.) In some industries, e.g., automotive, aircraft, and aerospace, the tolerances are almost always close, so it's not often necessary to spend a lot of time on supplementary criteria when the fastener is from one of these industries; that is, if it doesn't meet the primary criteria (and of course, if it doesn't conform to a fastener industry standard for a bolt), then it probably is a screw.

SECOND, when applying the supplementary criteria try to avoid applying the criteria to a sample fastener. It's more effective to compare drawings to drawings. That is, if you can get a hold of the specification drawing to which the fastener was made, take that drawing and compare it to the drawing of an industry standard fastener. Compare the specification to an industry standard in order to see if a given tolerance is fine like a screw, or coarse like a bolt.

FINALLY, keep in mind that all these rules are subordinate to Customs Rulings and Court Decisions, especially *Heads and Threads vs. U.S.*, 56 CCPA 95, 417 F.2d 637, C.A.D. 960, decided by the United States Court of Customs and Patent Appeals, May 15, 1969.

II. Specifications

The following is reproduced from "Specification for Identification of Bolts and Screws," ANSI-ASME B 18.2.1 1981, with illustrations from *Fastener Standards. 6th Edition*, Industrial Fasteners Institute, Cleveland, Ohio.

1. *Scope.*

This specification establishes a recommended procedure for determining the identity of an externally threaded fastener as a bolt or as screw.

2. *Definitions.*

2.1 Bolt.

A bolt is an externally threaded fastener designed for insertion through the holes in assembled parts, and is normally intended to be tightened or released by torquing a nut.

2.2 Screw.

A screw is an externally threaded fastener capable of being inserted into holes in assembled parts, of mating with a preformed internal thread or forming its own thread, and of being tightened or released by torquing the head.

3. *Explanatory Data.*

A bolt is designed for assembly with a nut. A screw has features in its design which make it capable of being used in a tapped or other preformed hole in the work. Because of basic design, it is possible to use certain types of screws in combination with a nut. Any externally threaded fastener which has a majority of the design characteristics which assist its proper use in a tapped or other preformed hole is a screw, regardless of how it is used in its service application.

4. *Procedure.*

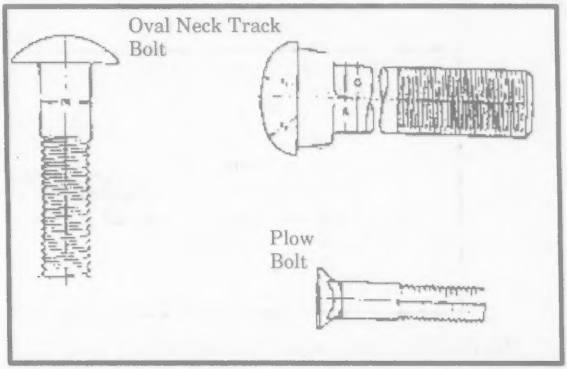
To identify an externally threaded fastener as a bolt or as a screw, two sets of criteria—Primary and Supplementary—shall be applied. The Primary Criteria (5.1 thru 5.4) shall be applied first. Any fastener which satisfies one of the Primary Criteria shall be identified accordingly, and no further examination need be made. The Supplementary Criteria (6.1 thru 6.9, and not listed in order of importance or priority of application) shall be applied to a fastener which does not satisfy completely any one of the Primary Criteria. The Supplementary Criteria detail the principal features in the design of an externally threaded fastener which contribute to its proper use as a screw. A fastener having a majority of these characteristics shall be identified as a screw.

5. *Primary Criteria*

5.1 An externally threaded fastener, which because of head design or other feature, is prevented from being turned during assembly, and

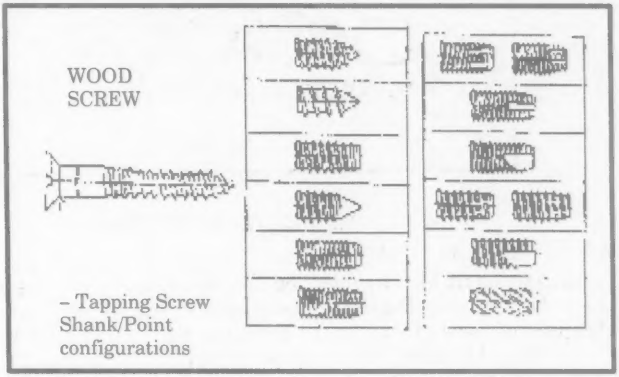
which can be tightened or released only by torquing a nut, is a bolt. (Example: round head bolts, track bolts, plow bolts).

EXAMPLES:



5.2 An externally threaded fastener, which has a thread form which prohibits assembly with a nut having a straight thread of multiple pitch length, is a screw. (Example: wood screws, tapping screws).

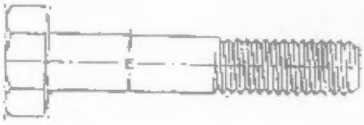
EXAMPLES:



5.3 An externally threaded fastener, which must be assembled with a nut to perform its intended service, is a bolt. (Example: heavy hex structural bolt).

EXAMPLE:

HEAVY HEX STRUCTURAL BOLT



5.4 An externally threaded fastener, which must be torqued by its head into a tapped or other preformed hole to perform its intended is a screw. (Example square head set screw).

EXAMPLE:

SQUARE HEAD SET SCREW

6. *SUPPLEMENTARY CRITERIA*

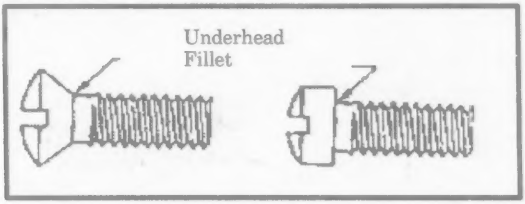
6.1 Under Head Fillet.

A screw should have a controlled fillet at the junction of the head with the body. Because of the severe combined torsion and tension stresses at this junction when torquing the head, the minimum limits of the fillet radius should be specified. Because the screw must be capable of being turned through a minimum clearance hole and into an immovable tapped hole the maximum limits of the fillet radius should be specified

to assure solid seating of the head, and to prevent interference at the top of the hole with the junction of head to body.

EXAMPLE:

Underhead Fillet. An underhead fillet is the filet at the junction of the head and shank of a headed fastener

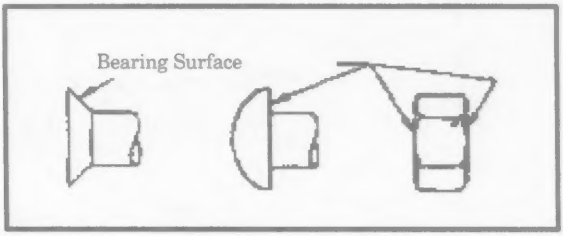


6.2 Bearing Surface.

The under head bearing surface of a screw should be smooth and flat to minimize frictional resistance during tightening, to prevent scoring of the surface against which the head is turned, and to produce uniform clamping loads.

EXAMPLE:

Bearing Surface. The bearing surface is the supporting or locating surface of a fasteners with respect to the part which it fastens (mates). The loading of a fastener is usually through the bearing surface.



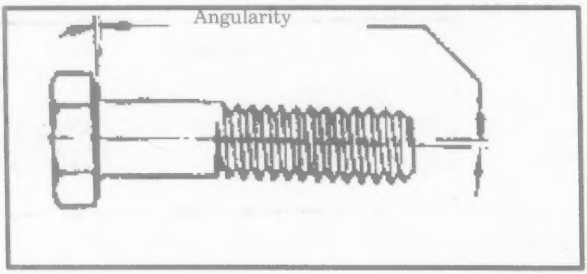
6.3 Head Angularity.

The angularity (squareness) of the underhead bearing surface with the shank of a screw should be controlled to minimize eccentric loading

in the screw or assembled parts, and to assure complete seating and uniform underhead bearing pressure.

EXAMPLE:

Angularity. Angularity is the angle between the axes of two surfaces of a fastener.

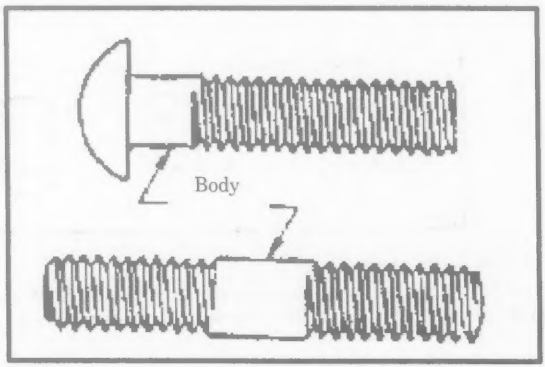


6.4 Body

The body of a screw should be closely controlled in accuracy of size and roundness. To fit affectively through a minimum clearance holed, the body diameter must have close tolerances, preferably unilateral on the minus side.

EXAMPLE:

Body. The body of a Threaded fastener is the unthreaded portion

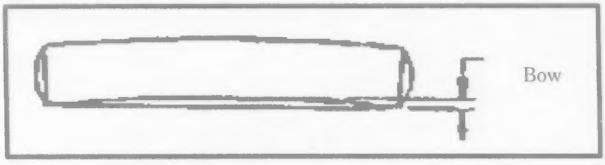


6.5 Shank Straightness.

The shank of a screw should be particularly straight to permit ready engagement with the internal thread, to prevent eccentric loading in the fastener or in the assembled parts, and to minimize interference with the walls of a minimum clearance hole.

EXAMPLE:

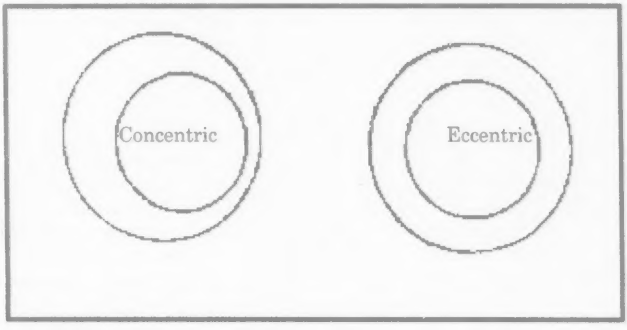
Bow or Camber. Bow or camber is the amount that aside of a surface of a fastener deviates from being straight.



6.6 Thread Concentricity

The threads of a screw should be concentric with the body axis within close limits to permit assembly into a tapped hole (which usually has a length of thread engagement longer than a nut) without binding of the body against the walls of a minimum clearance hole.

EXAMPLE:



6.7 Thread length.

The length of thread on a screw must be sufficient to develop the full strength of the fastener in tapped holes in various materials.

DEFINITION:

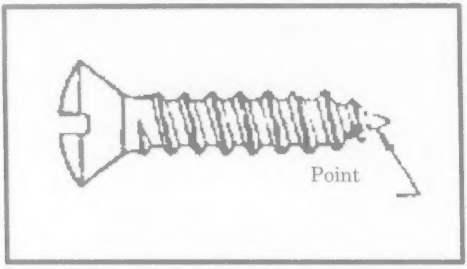
"Length of complete thread" is defined in Fastener standards 6th Edition as: the axial length of a thread section having full form at both crest and root but also including a maximum of two pitches at the start of the thread which may have a chamfer or incomplete crests.

6.8 Point.

A screw should have a chamfered, or other specially prepared point at its end to facilitate entry into the hole and easy start with the internal thread, which may be distant from the top of the hole. The point also protects the first thread, which, if damaged, may gall or scar the internal thread throughout its entire length.

EXAMPLE:

Point. The point of a fastener is the configuration of the end of the shank of a headed fastener or of each end of a headless fastener.

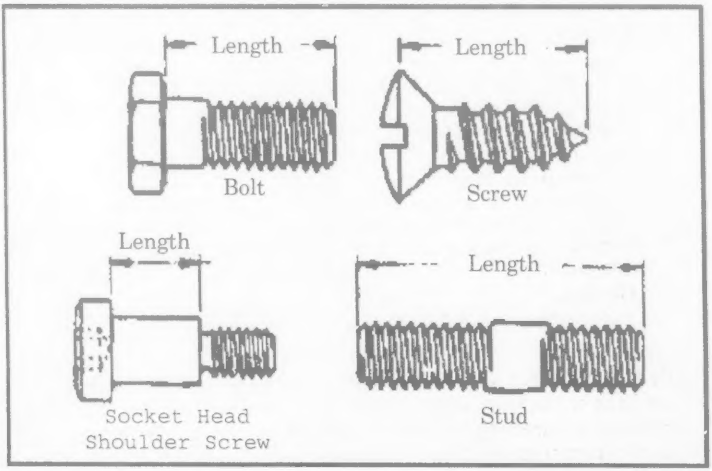


6.9 Length.

The length of a screw should be closely toleranced with variance preferably unilateral on the minus side to prevent bottoming of the fastener in a tapped hole.

EXAMPLE:

Length. The length of a headed fastener is the distance from the intersection of the largest diameter of the head with the bearing surface to the extreme point, measured in a line parallel to the axis of the fastener. Exceptions: The length of a shoulder screw and a socket head shoulder screw is the length of the shoulder. The length of a headless fastener is the distance from one extreme point to the other, measured in a line parallel to the axis of the fastener.



III. INVOICING

The accuracy of the information contained on invoices is an essential element of the structure of the many new and creative programs Customs has undertaken recently. These programs, including, but not limited to, automated entry processing and pre-importation review, may only provide their benefits to the trade community as a whole if the data gathered are correct and complete. This concern for invoice accuracy is not new, but, as we progress in automation, accuracy becomes indispensable.

Section 141.86 of the Customs Regulations concerns invoicing requirements. Subparagraph (a)(3) of the section specifically requires invoices have the following information:

> "A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers and symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is pecked."

A "detailed description" is on which enables an import specialist to properly classify imported merchandise. Accordingly, the invoice description must indicate any information which has a direct bearing on the proper classification of the imported item and it is incumbent upon the importer of record to ensure that the detailed description is present on each invoice.

Importers do not have to provide information that is not necessary to classify a specific item. However, they are responsible for giving the Customs Service the information that is needed.

Invoice guidelines for the importation of bolts and screws should include the following:

Industry Standards:

List all industry standards to which the fastener is made to conform.

Description:

If the industry standard includes a prescribed method of designation, use that method. In all cases, include: all dimensions, number of threads per inch, product name, head type, point type and component material.

Component Material:

State the name of the material which predominates by weight, e.g., steel, nickel, titanium, copper, etc. For fasteners of high nickel alloy; state percentage by weight of: iron, nickel and chromium.

Grade:

State the fastener grade, and identify the grading system.

IV. CLASSIFICATION

STEEL SCREWS AND BOLTS are classified in Chapter 73, under heading 7318 of the Harmonized Tariff Schedule of the United States. The tariff has separate provisions for the different types of screws and bolts, and separate provisions for threaded end unthreaded fasteners.

The tariff pages covering the various types of steel screws and bolts are reproduced here as Appendix 1.

Appendix 1

HARMONIZED TARIFF SCHEDULE of the United States (1997)

Annotated for Statistical Reporting Purposes

XV
73-30

Heading/ Subheading	Stat. Suf- fix	Article Description	Units of Quantity	Rates of Duty 1 General	Special	2
7318		Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:				
		Threaded articles:				
7318.11.00	00	Coach screws	kg	12.5%	Free (B,E,IL,J) 1.2% (CA) 1/ 7.5% (ME)	25%
7318.12.00	00	Other wood screws	kg	12.5%	Free (A,B,E,IL,J, ME) 1.2% (CA) 1/	25%
7318.13.00		Screw hooks and screw rings		5.7%	Free (A,B,E,IL,J, ME) 0.5% (CA)	45%
	30	Having shanks or threads with a diameter of less than 6 mm	kg			
	60	Having shanks or threads with a diameter of 6 mm or more	kg			
7318.14		Self-tapping screws:				
7318.14.10	00	Having shanks or threads with a diameter of less than 6 mm	kg	6.2%	Free (B,E,IL,J) 0.62 (CA) 1/ 3.7% (ME)	45%
7318.14.30	00	Having shanks or threads with a diameter of 6 mm or more	kg	6%	Free (B,E,IL,J) 0.6% (CA) 1/ 5.7% (ME)	45%
7318.15		Other screws and bolts, whether or not with their nuts or washers:				
7318.15.20		Bolts and bolts and their nuts or washers entered or exported in the same shipment		9.3%	Free (A,B,CA,E,IL, J) 0.4% (ME) (e) 2/	3.5%
	10	Having shanks or threads with a diameter of less than 6 mm	kg			
		Having shanks or threads with a diameter of 6 mm or more:				
	20	Track bolts	kg			
	30	Structural bolts	kg			
	40	Naut bolts	kg			
		Other:				
	50	With square heads	kg			
	60	With hexagonal heads	kg			
	90	Other	kg			
7318.15.40	00	Machine screws 9.5 mm or more in length and 3.2 mm or more in diameter (not including cap screws)	kg	0.4¢/kg	Free (A,B,E,IL,J) 0.1¢/kg (CA) 1/ 0.8¢/kg (ME)(e) 2/	2.2¢/kg
7318.15.50		Studs		1.9%	Free (A,B,E,IL,J, ME) 0.4% (CA) 1/	45%
	30	Of stainless steel	kg			
	60	Other	kg			
		Other:				
7318.15.60	00	Having shanks or threads with a diameter of less than 6 mm	kg	8.2%	Free (A,B,E,IL,J) 0.8% (CA) 1/ 3.7% (ME)	45%

1/ See subheading 9905.00.00.
2/ Rate suspended. See General Note 3(c)(iv).

Appendix 1 cont.

HARMONIZED TARIFF SCHEDULE of the United States (1997)

Annotated for Statistical Reporting Purposes

XV
73-31

Heading/ Subheading	Stat. Suf-fix	Article Description	Units of Quantity	Rates of Duty 1 General	Rates of Duty 1 Special	Rates of Duty 2
7318 (con.)		Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel (con.):				
7318.15 (con.)		Threaded articles (con.): Other screws and bolts, whether or not with their nuts or washers (con.):				
7318.15.80		Other (con.): Having shanks or threads with a diameter of 6 mm or more	.....	8.9%	Free (A,B,E,IL,J) 0.8% (CA) 1/ 5.7% (MX)	45%
	20	Set screws	kg			
		Other: Socket screws:				
	30	Of stainless steel	kg			
	45	Other	kg			
		Other: With hexagonal heads:				
	55	Of stainless steel	kg			
	65	Other	kg			
	80	Other	kg			
7318.16.00		Nuts	.....	0.1%	Free (A,B,CA,E,IL,J) 0.1% (MX) (z) 2/	0.5%
		Lugnuts:				
	15	Non-locking chrome-plated	kg			
	30	Locking	kg			
	45	Other	kg			
		Other:				
	60	Of stainless steel	kg			
	85	Other	kg			
7318.19.00	00	Other	kg	5.7%	Free (A,B,E,IL,J, MX) 0.5% (CA) 1/	45%
		Non-threaded articles:				
7318.21.00		Spring washers and other lock washers	.....	5.6%	Free (A,B,E,IL,J, MX) 0.5% (CA) 1/	35%
	30	Helical spring lock washers	kg			
	80	Other	kg			
7318.22.00	00	Other washers	kg	Free		1.3¢/kg
7318.23.00	00	Rivets	kg	0.2¢/kg	Free (A,B,CA,E,IL, J,MX)	2.2¢/kg
7318.24.00	00	Cotters and cotter pins	kg	4.6%	Free (A,B,E,IL,J, MX) 0.5% (CA) 1/3/	45%
7318.29.00	00	Other	kg	4%	Free (A,B,E,IL,J, MX) 0.5% (CA) 1/3/	45%

1/ See subheading 9905.00.00.
2/ Rate suspended. See General Note 3(c)(iv).
3/ See subheading 9905.73.18.
4/ See subheading 9905.73.19.

Additional Information

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. To use the CEBB, you must have a personal computer with a modem. The CEBB supports

modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 440–6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 440–6236.

The Internet

The Customs home page on the Internet's World Wide Web—which began public operation on August 1, 1996—will also provide the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The home page will post timely information including proposed and final regulations, rulings, news releases, Customs publications and notices, *etc.*, which may be printed or "downloaded" to your own PC. The Customs Service does not charge the public for this service, although you will need Internet access to use it. The Internet address for Customs home page is **http://www.customs.ustreas.gov**.

Customs Regulations

The current edition of *Customs Regulations of the United States,* in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1996 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1995 through March, 1996 is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions ("Customs Bulletin")* is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade and Customs related decisions of the U.S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The Customs Bulletin is available for sale from the Superintendent of Documents.

Video Tapes

The U.S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in understanding the new ***Rules of Origin for Textiles and Apparel Products*** which became effective on July 1, 1996. Copies of this tape are

available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for $20.00 (U.S. funds) directly from the Customs Service. If you require further information, or would like to purchase one or more tapes, please forward your written request to: U.S. Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

On Tuesday, March 18, 1997, Customs started filling orders for its video tape entitled "Customs Compliance: Why You Should Care." This 30 minute tape is divided into two parts. Part I, almost 18 minutes in length, is designed to provide senior executives and others in importing and exporting companies with an overview of some significant features of the Customs "Modernization Act" and some major reasons for adopting new strategies for minimizing legal exposure under this Act. Part II is intended primarily for compliance officers, legal departments and company officers involved in importing and exporting. This latter Part, approximately 12 minutes in length, explains why Customs and the trade can benefit from sharing responsibilities under Customs laws and it provides viewers with some legal detail relating to record keeping, potential penalties for non-compliance, and Customs Prior Disclosure program.

Part I features Customs Commissioner George Weise, Assistant Commissioner for Regulations and Rulings Stuart Seidel, and Motorola's Vice President and Director of Corporate Compliance, Mr. Jack Bradshaw. Assistant Commissioner Seidel is the only speaker in Part II.

The tape is priced at $15.00 including postage. New orders, complete with payment in the form of a check or money order, should be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Operational Oversight Division, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

Informed Compliance Publications

The U.S. Customs Service has also prepared other Informed Compliance publications in the *What Every Member of the Trade Community Should Know About:* series, which are available from the Customs Electronic Bulletin Board and the Customs Home Page (see above). As of the date of this publication, the following booklets were available:

- *Fibers and Yarns*
- *Buying and Selling Commissions*
- *NAFTA for Textiles and Textile Articles*
- *Raw Cotton*
- *Customs Valuation*
- *Textile and Apparel Rules of Origin*
- *Mushrooms*
- *Marble*
- *Peanuts*
- *Caviar*

- *Bona Fide Sales and Sales for Exportation*
- *Caviar*
- *Granite*
- *Internal Combustion Piston Engines*
- *Vehicles, Parts and Accessories*
- *Distinguishing Bolts from Screws*

Check the Customs Electronic Bulletin Board and the Customs Home Page for more recent publications.

Other Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000–152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

What Every Member of the
Trade Community Should Know About:

Internal Combustion Piston Engines:

Tariff Classification of Engines and Their Parts

A Basic Level
Informed Compliance Publication of the
U.S. Customs Service

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are ***"informed compliance"*** and ***"shared responsibility."*** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The Commercial Operations Division, Detroit, Michigan, and the National Commodity Specialist Division of the Office of Regulations and Rulings have prepared this publication on ***Internal Combustion Piston Engines***, as part of a series of informed compliance publications regarding the classification of imported merchandise. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

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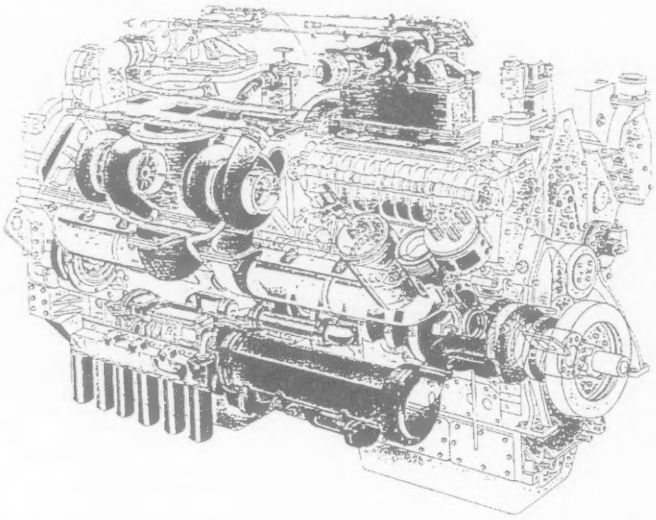
Introduction

For people with little knowledge of how things work, and even for those who like to "get under the hood," the terminology and requirements imposed by the Harmonized Tariff Schedule (HTS) for the gasoline and diesel engines of headings 8407 and 8408 can be quite daunting. What exactly is an internal combustion engine? What does spark-ignition mean? How does that differ from compression-ignition? Do rotary engines really have "pistons"? How can one tell how many cubic centimeters of cylinder capacity an engine has or what an engine's power output is in kilowatts if the invoice doesn't say? Which parts of gasoline and diesel engines are classifiable as engine parts in heading 8409 and which ones go elsewhere?

The goal of this presentation is to lay out in straightforward language how such engines and their parts should be classified, and why, so that the importing community will have the guidance it needs to classify them correctly and so that Customs officers will be able to easily tell when they are not.



Technical Overview

Before we examine the tariff provisions involved and get into the inner workings of the tariff classification process, a brief primer on engine technology would be helpful.

Most sources commonly define an engine as a machine or apparatus for converting energy into mechanical power or motion. The engine's purpose is to translate the potential energy locked in a fuel into a rotat-

ing force called "torque", which is a twisting force or action that performs work. It is created in the engine by burning a mixture of fuel and air at a controlled rate. This is called "combustion" and when it occurs within the confines of an enclosed cylinder, it is referred to as "internal combustion", as opposed to engines which burn their fuel externally like the steam engine of an old-fashioned paddle wheeler which employs steam raised in a fire-driven boiler to drive a piston up and down in a cylinder.

Internal combustion engines, then, for the purposes of this discussion, are those in which power is produced by burning fuel inside a combustion chamber or cylinder containing a piston which goes up and down in a reciprocating motion resulting from the combustion. Extending down from the piston is a connecting rod which links the piston to the crankshaft. The connecting rod and crankshaft convert the reciprocating motion of the piston into motion or work.

Technically, internal combustion engines can be categorized in many ways. The most common ways of talking about engines include the combustion cycle, the valve location, the cooling system, the number and placement of the cylinders and the type of fuel used.

Most internal combustion engines use a two- or four-stroke combustion cycle. The vast majority of automobile engines are of the four-stroke cycle type. In this type, there is an intake stroke, wherein the intake valve opens to admit the air/fuel mixture to be burned during one complete cycle. Next is the compression stroke, wherein the mixture is squeezed into a smaller volume than as admitted. The power stroke, which comes next, ignites the mixture which forcefully thrusts the piston into turning the crankshaft, whose power is then transmitted into motion or work. Finally, the exhaust stroke results in the opening of the exhaust valve to vent the spent gases of the power stroke. The rotary engine, or Wankel engine (named after its inventor), also uses a four-stroke cycle, but does not employ conventional pistons. Instead it uses triangular rotors which function like pistons, but in place of the up and down reciprocating motion of the piston, the rotors continually revolve in the same direction as their eccentric shafts.

The two-stroke cycle engine reduces these strokes from four to two and does not employ valves. Two-stroke engines can operate at very high speeds and can be compact and light. Thus, they are popular in small engine operations such as chain saws, lawn mowers, marine outboard motors and the like. They are not noted for fuel efficiency or emissions control.

The engines which most dominate the fields of design and use are the V–8, V–6 and in line 4-cylinder engines. The in line arrangement of the engine's cylinders is self-evident while the V classification indicates placement of the engine's cylinders in two rows at an angle to each other. Another example of an engine categorized by cylinder arrangement is the radial engine, which has been very popular for use in propel-

ler-driven aircraft. In this engine all the connecting rods leading from the pistons are connected to a master rod.

In the category of engines by valve location, the I-Head arrangement is in almost universal use. In the I-Head engine, both the intake and exhaust valves are located in the engine's cylinder head, either in a straight line or staggered.

Another method of categorizing engines is by the type of fuel used. Internal combustion engines may employ a wide variety of fuels, including, but not limited to, gasoline, diesel fuel, gasohol (a mixture of gasoline and alcohol), LNG (liquefied natural gas), CNG (compressed natural gas) or LPG (liquefied propane gas). Internal combustion piston engines which ignite their fuels with a spark ignition system are classified in heading 8407. Diesel-fueled engines, on the other hand, do not use an ignition system, but rely on the heat of very high compression, instead of spark ignition, to ignite their heavier, less refined diesel fuel. These engines are classified in heading 8408.

Tariff Matters

Internal combustion piston engines and their parts are generally provided for in headings 8407, 8408, and 8409, which are included, of course, in Chapter 84 of Section XVI. We will include the individual tariff provisions as we discuss them and will also refer to Section and Chapter notes as warranted. However, please be advised that these are the provisions and notes which were in effect on the date of this publication and are used for discussion purposes only. You are urged to consult the current edition of these references for the most up-to-date information. We have not included the general or special program duty rates. Again, you should consult the most current edition of the tariff for this information.

Not all gasoline and diesel engines are classified in headings 8407 and 8408. Following Note 1(p), Section XVI and Note 3, Chapter 95, internal combustion piston engines which are for use solely or principally with the articles of Chapter 95 are to be classified with those articles. For example, internal combustion engines for use solely or principally in scale model airplanes (goods of Chapter 95) will be classified in Chapter 95 as parts of those scale model planes. Similarly, variable compression motors designed specially for the determination of the octane and cetane value of motor fuels are classified in Chapter 90. See Section Note 1(m), Section XVI.

These exclusions aside, virtually all other types of internal combustion piston engines are classified in the aforementioned headings. Gasoline and diesel engines share similar mechanical designs and have the same essential elements as each another: cylinders containing pistons, connecting rods, camshafts, a crankshaft, and intake and exhaust valves. They may have only one cylinder, as with engines used on lawn mowers and other small lawn and garden tools, or over a dozen cylinders. Automobiles usually have four or six cylinders, but the diesel engines used on railway locomotives may have as many as 16 or more.

All the engines of headings 8407 and 8408 may be equipped with fuel injectors, ignition parts, fuel or oil reservoirs, radiators, oil coolers, pumps for oil or fuel, blowers, air or oil filters, clutches or power drives, or starting devices and still remain engines for classification purposes. They may also be fitted with change speed gears or equipped with a flexible shaft and still be considered an engine. Reference Section XVI, Note 3.

A. The Engines of Heading 8407

As you may see from a reading of the tariff provisions, the tariff classification process for the engines of this heading will require that you know how the engines you wish to classify are going to be used. There are four main subheading groups in 8407, covering spark-ignition internal combustion piston engines for: (1) aircraft (8407.10), (2) marine propulsion (8407.21 & 8407.29), (3) reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87 (8407.31 through 8407.34) and (4) all other spark ignition internal combustion piston engines, including rotary (Wankel) engines (8407.90). The first question one needs to ask after determining that the article is a spark-ignition reciprocating or rotary internal combustion piston engine is what is the sole or principal use of this engine? Guidance in this process is offered by Additional U.S. Rule of Interpretation 1(a), which states:

> a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;

Following this rule, then, we need to know the engine's principal use: is it used in aircraft, vessels, automobiles, trucks, tractors, electric generators or somewhere else? Determining the principal use is important to start with but there are other "use" factors which may also have to be considered. There are three different kinds of "use" which come into play in the HTS provisions covering engines. As already stated, most of the classifications of 8407 are based on the concept of principal use, but some are also "actual use" provisions and still others are "suitable for * * * use" provisions as well. More on this later.

To begin with, subheading 8407.10.00 covers certain aircraft engines. You will need to know whether they are for use in civil aircraft or for use in other than civil aircraft, whether they are new, used, or rebuilt and their power output in kilowatts:

8407.10.00		Aircraft engines
		For use in civil aircraft:
		New:
	20	Less than 373 kW
	40	373 kW or over
	60	Used or rebuilt
	90	Other

General Note 6 (b)(i), of the Harmonized Tariff Schedule instructs us that "[f]or purposes of the tariff schedule, the term 'civil aircraft' means any aircraft, aircraft engine, or ground flight simulator (including parts, components, and subassemblies thereof)

(A) that is used as original or replacement equipment in the design, development, testing, evaluation, manufacture, repair, maintenance, rebuilding, modification, or conversion of aircraft;

and

(B)(1) that is manufactured or operated pursuant to a certificate issued by the Administrator of the Federal Aviation Administration (hereafter referred to as the 'FAA') under section 44704 of title 49, United States Code, or pursuant to the approval of the airworthiness authority in the country of exportation, if such approval is recognized by the FAA as an acceptable substitute for such an FAA certificate; [or]

(2) for which an application for such certificate has been submitted to, and accepted by, the Administrator of the FAA by an existing type and production certificate holder pursuant to section 44702 of title 49, United States Code, and regulations promulgated thereunder; or

(3) for which an application for such approval or certificate will be submitted in the future by an existing type and production certificate holder, pending the completion of design or other technical requirements stipulated by the Administrator of the FAA.

General Note 6(ii) goes on to say that "[t]he term 'civil aircraft' does not include any aircraft, aircraft engine, or ground flight simulator (or parts, components, and subassemblies thereof) purchased for use by the Department of Defense or the United States Coast Guard, unless such aircraft, aircraft engine, or ground flight simulator (or parts, components, and subassemblies thereof) satisfies the requirements of subdivisions (i)(A) and (i)(B)(1) or (2)."

In simpler language, this means that the term "civil aircraft" includes aircraft, aircraft engines and flight simulators (including parts, components and subassemblies thereof) that are (1) certified by (or for which an application for certification has been accepted by) the FAA or a foreign airworthiness authority recognized by the FAA or (2) purchased for use by the Department of Defense or the Coast Guard, if these goods are manufactured or operated pursuant to a certificate issued or recognized by the FAA. This will also include those goods, usually for testing, for which an application for FAA certification will be submitted to the FAA in the future.

The test provision (subdivision (i)(B)(3)) is limited to a person who holds an existing type and production certificate. The quantity of units that may be imported under subdivision (i)(B)(3) is limited to the amount specified in the design or technical requirements stipulated by the FAA. Customs may verify by requesting a copy of the test. Post-im-

portation claims may be made but no interest is payable if a refund of duty results.

If you are satisfied that the aircraft engine meets this definition, then all you will need to know is whether it is new, used or rebuilt. If new, you need to know its power output. Power output is measured in terms of kilowatts (kW) or watts (W) in the HTS. One kW equals 1,000 watts. If you know the horsepower (hp) of the engine, all you need to do is to simply multiply that number by 0.7457 to convert it to kW and then classify it accordingly. This formula will apply anywhere in the tariff.

Subheadings 8407.21 and 8407.29 deal with marine propulsion engines, those engines which are principally used to power the vessels of Chapter 89:

		Marine propulsion engines:
8407.21.00		Outboard motors
	40	Less than 22.38 kW
	80	Other
8407.29.00		Other
	10	Inboard engines with outboard drive
		Inboard engines with inboard drive:
	20	Less than 746 W
	30	746 W or greater, but not exceeding 18.65 kW
	40	Exceeding 18.65 kW

A helpful definition of outboard motors may be found in the Explanatory Notes to the Harmonized Commodity Description and Coding System. The Explanatory Notes constitute the official interpretation of the scope and content of the tariff classifications at the international level. While not legally dispositive, they represent the views of classification experts on the Harmonized System Committee of the World Customs Organization, and are given considerable weight by those whose business it is to interpret the HS. Outboard motors are defined in the Explanatory Notes to heading 8407 as follows:

> The heading includes "outboard motors" for the propulsion of small boats, consisting of a motor of this heading, a propeller and a steering device, the whole constituting a single, indivisible unit. These motors, designed to be attached to the outside of the hull of the boat, are detachable, that is they can be attached and removed easily and are adjustable, the unit turning on the point of attachment. However, motors designed to be fixed to the inside of the hull at the rear of the boat combined with a block holding a steering propeller fixed to the exterior of the boat at the corresponding place are not regarded as outboard motors.

With the outboard motors of 8407.21.00 you will need to know their power output for appropriate statistical classification. The last sentence of the above note refers to marine engines known as inboard/outdrive engines and they are classified in 8407.29.0010. Lastly, inboard engines with inboard drive are those engines which are located somewhere inboard of the vessel, usually in a hold, and which feature a drive

shaft fitted through the vessel's hull with a propeller mounted at the end of the shaft. These are classified in 8407.29.0020, 30 or 40 depending on their power output. Incidently, the engines used to power personal water craft, commonly referred to as jet skis, are classified as hydrojet engines in 8412.29.4000.

The next several subheadings deal with reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87. These would not include rotary engines (Wankel engines) since these do not employ reciprocating pistons but trilobal rotors which act as pistons. Rotary engines are generally classified in 8407.90.

		Reciprocating piston engines of a kind used for the propulsion of vehicles of chapter 87:
8407.31.00		Of a cylinder capacity not exceeding 50 cc
	40	Less than 746 W
	80	Other
8407.32		Of a cylinder capacity exceeding 50 cc but not exceeding 250 cc:
8407.32.10	00	To be installed in tractors suitable for agricultural use
8407.32.20		To be installed in vehicles of subheading 8701.20, or heading 8702, 8703 or 8704
	40	Used or rebuilt
	80	Other
8407.32.90		Other
	40	Not exceeding 18.65 kW
	80	Exceeding 18.65 kW
8407.33		Of a cylinder capacity exceeding 250 cc but not exceeding 1,000 cc:
8407.33.10		To be installed in tractors suitable for agricultural use
	30	Not exceeding 37.3 kW
		Exceeding 37.3 kW:
	60	Air-cooled
	90	Other
		To be installed in vehicles of subheading 8701.20, or heading 8702, 8703 or 8704:
8407.33.30		To be installed in vehicles specially designed for traveling on snow, golf carts, non-amphibious all-terrain vehicles and burden carriers
	40	Used or rebuilt
	80	Other
8407.33.60		Other
	40	Used or rebuilt
	80	Other

8407.33.90		Other
	40	Not exceeding 18.65 kW .... No.
	80	Exceeding 18.65 kW ..... No.
8407.34		Of a cylinder capacity exceeding 1,000 cc:
		Of a cylinder capacity not exceeding 2,000 cc:
8407.34.05		To be installed in tractors suitable for agricultural use
	30	Not exceeding 37.3 kW
		Exceeding 37.3 kW:
	60	Air-cooled
	90	Other
		To be installed in vehicles of subheading 8701.20, or heading 8702, 8703 or 8704:
8407.34.14	00	Used or rebuilt
8407.34.18	00	Other
8407.34.25	00	Other
		Of a cylinder capacity exceeding 2,000 cc:
8407.34.35		To be installed in tractors suitable for agricultural use
	30	Not exceeding 37.3 kW
		Exceeding 37.3 kW:
	60	Air-cooled
	90	Other
		To be installed in vehicles of subheading 8701.20, or heading 8702, 8703 or 8704:
8407.34.44	00	Used or rebuilt
8407.34.48	00	Other
8407.34.55	00	Other

At first glance these subheadings appear to be quite intimidating, but things are not nearly as forbidding as they might seem.

There are four major subheadings in this group and they are ordered by cylinder capacity: (1) Not exceeding 50 cc (8407.31); (2) exceeding 50 cc but not exceeding 250 cc (8407.32); (3) exceeding 250 cc but not exceeding 1,000 cc (8407.33) and (4) exceeding 1,000 cc (8407.34). These subheadings have as their first point of departure the size of the engine's cylinder capacity in cubic centimeters (cc). From there on, things will fall into place by use. In order to determine an engine's cylinder capacity or displacement, we may need to apply another fairly simple formula. Invoices for engines seldom give an engine's cylinder capacity in cubic centimeters, but normally do so in terms of liters. A liter of cylinder displacement for an engine equals 1,000 cc. A 2.2 liter engine, therefore, equal 2,200 cc and so on. The first order of business, then, is to compute the cylinder capacity and go to the appropriate subheading group.

Once in the appropriate subheading group by cylinder capacity, you will need to know the tariff classification of the Chapter 87 vehicle in which the engine will be used. Each of these subheading groups has a three-part structure, broken out according to the class of Chapter 87 vehicle. The first part concerns tractors suitable for agricultural use found in subheadings 8701.30.10 and 8701.90.10. The second part deals with vehicles of certain named provisions: vehicles of 8701.20 (road tractors for semi-trailers), of heading 8702 (motor vehicles for the transport of 10 or more persons), of heading 8703 (automobiles) and of heading 8704 (trucks). The last part of each of these subheading groups encompasses engines principally used in vehicles of Chapter 87 other than the foregoing.

After you have identified the vehicle in question, simply slide down to the appropriate subheading and find the provision where your engine belongs. In some cases you will need to know if the engine is used or rebuilt or air cooled or of a certain power output.

The subheadings for engines to be installed in tractors suitable for agricultural use are actual use provisions and are governed by Additional U.S. Note 2(b), which reads as follows:

> a tariff classification controlled by the actual use to which the imported goods are put in the United States is satisfied only if such use is intended at the time of importation, the goods are so used and proof thereof is furnished within 3 years after the date the goods are entered.

Administrative requirements associated with this rule are spelled out in Sections 10.131 through 10.138 of the Customs Regulations.

The "suitability" for agricultural use referred to in these provisions is rather broad and encompasses those tractors which are actually, practically and commercially fit for such use. A tractor does not have to be principally or actually used in agriculture to fall into this category, but its use in agricultural applications must be substantial enough to be more than casual, incidental, exceptional or merely possible.

Following the agricultural tractor part in each subheading group is the part for certain "named" vehicles. The engines of this group are of a kind which are designed to be principally used and installed in the vehicle classifications named in the subheading, that is, in the vehicles of 8701.20, 8702, 8703, and 8704. In one subheading, 8407.33.30, you are further asked to distinguish between these general classes of named vehicles and certain special kinds of vehicles of those classes, namely, vehicles specially designed for traveling on snow, golf carts, non-amphibious all-terrain vehicles or burden carriers. Importers are reminded that they are required to enter engines that are designed for and to be installed in these "named" vehicles in the subheading provided for them and are responsible for any other administrative requirements that may be associated with them.

The last part of each of the subheading groups for engines principally used in vehicles of Chapter 87 constitutes the "Other" provisions,

which describe engines that answer to the terms of the superior subheadings but which are not described in the eo nomine subheadings indented under them. So, for example, a reciprocating piston engine of a kind used for the propulsion of a vehicle of Chapter 87 which has a cylinder capacity exceeding 1000 cc and which is not classified in either of the two named provisions indented under this subheading group would fall in 8407.34.5500. This might be an engine for industrial-type tractors or for another Chapter 87 vehicle not described in subheading 8701.20 or headings 8702, 8703, or 8704.

To recap for these "vehicles of Chapter 87" subheadings: first, determine the engine's cylinder capacity in cubic centimeters (1,000 cc = 1 liter); second, know the classification of the Chapter 87 vehicle in question; if it's not named it's "other"; and last, know any special details that may be required; also be alert to the actual use subheadings and suitability questions. The process is exacting but logical.

The last subheading in 8407 involves all other engines covered by the terms of the heading:

8407.90		Other engines:
8407.90.10		To be installed in agricultural or horticultural machinery or equipment
		Not exceeding 37.3 kW:
	10	Less than 4,476 W
	20	Other
		Other:
	60	Air-cooled
	80	Other
8407.90.90		Other
	10	Gas (natural or LP) engines
		Other:
	20	Less than 746 W
	40	746 W or greater but less than 4,476 W
	60	4,476 W or greater but not exceeding 18.65 kW
	80	Exceeding 18.65 kW

Therefore, all spark-ignition reciprocating or rotary internal combustion piston engines not described in any of the 3 foregoing subheading groups are classified here. This would include engines to be installed (actual use again) in agricultural or horticultural machinery or equipment, like harvesters, combines, lawn mowers, hedge trimmers and the like. It would also include engines which meet the terms of the heading but which do not have a principal use identified in the named subheadings, that is, are not principally used in aircraft, marine propulsion or reciprocating engines for vehicles of Chapter 87. So, for example, industrial engines, rotary engines, natural gas engines and the like, none of which have a principal use in the named subheadings, are classified in 8407.90.

B. Engines of Heading 8408

The information requirements for compression-ignition internal combustion piston engines are basically like those for gasoline engines. Once again, you need to know the principal use of the engine. The provisions of 8408 are broken out in 3 major subheading groups, easily presented at a glance:

8408		Compression-ignition internal combustion piston engines (diesel or semi-diesel engines):
8408.10.00		Marine propulsion engines
	05	Not exceeding 111.9 kW
	15	Exceeding 111.9 kW but not exceeding 149.2 kW
	20	Exceeding 149.2 kW but not exceeding 223.8 kW
	30	Exceeding 223.8 kW but not exceeding 373 kW
	40	Exceeding 373 kW but not exceeding 746 kW
	50	Exceeding 746 kW
8408.20		Engines of a kind used for the propulsion of vehicles of chapter 87:
8408.20.10		To be installed in tractors suitable for agricultural use
	40	Not exceeding 37.3 kW
	80	Exceeding 37.3 kW
8408.20.20	00	To be installed in vehicles of subheading 8701.20, or heading 8702, 8703 or 8704
8408.20.90	00	Other
8408.90		Other engines:
8408.90.10		To be installed in agricultural or horticultural machinery or equipment
	40	Not exceeding 37.3 kW
	80	Exceeding 37.3 kW
8408.90.90		Other
	10	Not exceeding 149.2 kW
	20	Exceeding 149.2 kW but not exceeding 373 kW
	30	Exceeding 373 kW but not exceeding 746 kW
	40	Exceeding 746 kW but not exceeding 1,119 kW
	50	Exceeding 1,119 kW

Subheadings 8408.10 and 8408.20 are straight forward principal use provisions and cover diesel engines for marine propulsion and engines of a kind used for the propulsion of vehicles of Chapter 87, respectively. Subheading 8408.90 covers all other diesel engines, such as those for

agricultural or horticultural machinery or equipment, locomotives, or industrial use. The same complications and cautionary advice arising over "actual use" and "suitable for * * * use" seen in 8407 apply here as well. Unlike the classifications covering gasoline engines, the subheadings for diesel engines do not require any knowledge of cylinder capacity. They do require, however, power output information similar to that of heading 8407. So if you have power ratings given in horsepower (hp), keep in mind that 1 hp equals 0.7457 kW.

C. Parts of Engines (8409)

In the HTS there is no area that is more troubling and causes more confusion that the classification of parts. The classification of engine parts is no exception to this rule. Parts of engines provided for in headings 8407 and 8408 are generally classifiable under heading 8409.

The classification of parts of goods of Section XVI is governed by Section Note 2 to Section XVI, which, in simple terms, states that:

> (1) parts which in themselves constitute an article covered by their own heading in chapters 84 or 85 are to be classified in that heading. For example, pumps are classified in heading 8413, compressors are in 8414, filtering machinery in 8421, ball bearings in 8482 and so on;
>
> (2) parts that are suitable for use solely or principally with a particular kind of machine or with a number of machines of the same heading are to be classified with the machines of that kind or in one of a group of headings providing for such parts. Heading 8409 is just such a heading; and
>
> (3) parts which are suitable for use solely or principally with machines of more than one heading or which do not have a sole or principal use are to be classified in a parts heading which describes them, for example, heading 8409 or, failing that, in heading 8485.

If a part of a machine is not excluded from Section XVI by any of the exceptions found in Note 1 to Section XVI, Note 1 to Chapter 84, and Note 1 to Chapter 85, then it must be classified in one of the headings of chapters 84 or 85, following the rules established by Note 2 of Section XVI. This logic will prevail in the face of any other language found in the tariff. For example, there is a provision covering gaskets and other seals of plastic in Chapter 39 (subheading 3926.90.45). If you have a plastic gasket machine part it would not be classified in Chapter 39, despite the specific provision, but in the appropriate heading in Section XVI. This is so because the only exclusion from Section XVI applying to plastic goods is found in Section Note 1(a), wherein it is stated that transmission, conveyor or elevator belts or belting of plastics of Chapter 39 are not covered by Section XVI. This is echoed by Note 2(o) of Chapter 39 which states that articles of Section XVI are not covered by Chapter 39, the obvious "exception" to this rule being the transmission, conveyor or elevator belts or belting of plastics, since such goods, by exclusionary language, are not articles of Section XVI. Actually, most engine gaskets are composite goods made of more than one material. This can result in

the need to consider which component imparts "essential character". However, cylinder head gaskets and similar seals of metal sheeting combined with other material, or of two or more layers of metal, are provided for in heading 8484.

An additional example of this legal note confusion relates to articles which appear to be provided for in Chapter 73 but which function as parts of the machinery of Chapter 84, such as engines. If such parts are not excluded by the notes to Section XVI, they are classifiable in Chapter 84. This is again echoed elsewhere, this time by Note 1(f) of Section XV which excludes articles of Section XVI. Consequently, a steel tube or a steel cable which is part of an engine would go under 8409 rather than in Chapter 73. However, if a Chapter 73 article which functions as an engine part is excluded by the notes to Section XVI, then it would remain in Chapter 73. For example, steel fasteners, timing chains and other "parts of general use", which are excluded by Section XVI, Note 1(g), would be classified in their appropriate Chapter 73 heading.

Another complicating factor which can sometimes be misleading is product designation and language. Sometimes a particular engine part may have the same name as something which is specifically provided for elsewhere than as engines parts, but because of design or function is nonetheless classified as an engine part. The mushroom-shaped intake and exhaust valves on engines are commonly known as "valves" and serve a valve-like function, but have no valve body and are therefore classifiable under 8409 rather than in 8481. Piston pins, also known as wrist pins, may have a fastener-like function, but this function is outweighed by their more important pivoting role and are also considered engine parts rather than fastener pins of heading 7318. Similarly, thermostats may be provided for in heading 9032, but the "thermostats" which go in motor vehicles are actually thermostatically-controlled valves of heading 8481.

Sometimes the tariff language itself can be confusing (surprise, surprise). Heading 8483, for example, covers "transmission shafts". Transmission shafts are articles which transmit power. This term is not just describing the transmission shaft in the transmission portion of a motor vehicle's drive train. Consequently, any shafts which transmit power, for example. the crankshaft and the camshaft in an engine, are classifiable under subheading 8483.10. However, to double up on the confusion, it should be noted that those goods described in heading 8483 which function as parts of the goods of Section XVII (motor vehicles, planes, trains and vessels) and which are *not* integral parts of engines or motors, are classifiable in heading 8708. See Note 2 (e) of Section XVII and Note 1(l) of Section XVI.

Please be sure to refer to the exclusions detailed in the various section and chapter notes whenever in doubt and be guided by the rule that, unless excluded by these notes, parts of machines are classified in Section XVI by operation of Section Note 2.

Fortunately, most of the major components of the engines of 8407 and 8408 are classifiable under 8409. The Explanatory Notes to 8409 specifically mention pistons, cylinders and cylinder blocks, cylinder heads, cylinder liners, inlet or exhaust valves, piston rings, connecting rods, carburetors and fuel nozzles as examples of the kind of internal combustion piston engine parts that go there. Conversely, the Explanatory Notes specifically exclude: (a) injection pumps (heading 8413); (b) engine crankshafts, camshafts and gearboxes (heading 8483); and (c) electrical starting or ignition equipment such as spark plugs and glow plugs (heading 8511).

There are two major subheading groups in 8409. These are parts suitable for use solely or principally with the engines of 8407 and 8408 which are (1) for aircraft engines and (2) which are for all other engines. Once you get pase tricky.

8409		Parts suitable for use solely or principally with the engines of heading 8407 or 8408:
8409.10.00		For aircraft engines
	40	For use in civil aircraft
	80	Other
		Other:
8409.91		Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines):
8409.91.10		Cast-iron parts, not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery
	40	For vehicles of subheading 8701.20, or heading 8702, 8703 or 8704
	60	For marine propulsion engines
	80	Other
		Other:
		For vehicles of subheading 8701.20, or heading 8702, 8703 or 8704:
8409.91.30	00	Aluminum cylinder heads
8409.91.50		Other
	10	Connecting rods
	80	Other
8409.91.92		For marine propulsion engines
	10	Connecting rods
	90	Other

8409.91.99		Other
	10	Connecting rods
	90	Other
8409.99		Other:
8409.99.10		Cast-iron parts, not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery
	40	For vehicles of subheading 8701.20, or heading 8702, 8703 or 8704
	60	For marine propulsion engines
	80	Other
		Other:
8409.99.91		For vehicles of subheading 8701.20, or heading 8702, 8703 or 8704
	10	Connecting rods
	90	Other
8409.99.92		For marine propulsion engines
	10	Connecting rods
	90	Other
8409.99.99		Other
	10	Connecting rods
	90	Other

Subject to any pertinent exclusionary language and following Note 2 to Section XVI, parts which are suitable for use solely or principally with internal combustion piston aircraft engines are to be classified in subheading 8409.10. You will need to know whether the aircraft engine in which the engine parts are principally used are certified or accepted for use in civil aircraft or not. See our discussion of this matter under the engines of heading 8407. See also General Note 6 to the HTS.

The other major subheading in this provision is for parts for all other internal combustion piston engines. Indented under this "Other" provision are two subheading groups: 8409.91, which covers parts principally used in the gasoline engines of heading 8407, and 8409.99, which covers all other parts, including those parts principally used on diesel engines of heading 8408 and those parts which are engine parts but not principally used with the engines of 8407. This latter kind might be a part that can be used equally on the engines of both headings 8407 and 8408. See Note 2(c), Section XVI.

Each of these subheadings has an initial breakout covering "Cast-iron parts, not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery." Since these provisions are unconditionally free, caution should be exercised to be certain that goods entered under these sub-

headings are (1) actually made of cast iron (a mill certificate will provide evidence of the chemical composition of this product or random lab testing may suffice); (2) have not been advanced beyond cleaning (a process such as stress relieving is permitted, but not heat treating); and (3) have not been machined beyond mere clean-up or have been machined merely to permit location for finishing the machinery. If eligible for classification in either of the "cast-iron parts" subheadings, it will be necessary to classify the article according to its principal use, either in certain vehicles (that is, road tractors for semi-trailers, public-transport type passenger motor vehicles, motor vehicles for the transport of persons, or motor vehicles for the transport of goods), in marine propulsion engines, or in "other" than these two.

Assuming the cast-iron provisions do not apply, the classification of the article will be by its principal use in one of the three classes of goods just enumerated.

EXAMPLES OF ENGINE PART CLASSIFICATIONS

Under 8409	Not Under 8409	HTS
Carburetors	Bearings	8483
Connecting Rod	Camshafts & Crankshafts	8483
Cylinder Blocks	Electronic Control Units & Sensors	9026–9032
Cylinder Heads	Fans & Turbo chargers	8414
Cylinder Liners	Filters	8421
Fuel Nozzles	Fuel Injectors (gasoline/diesel)	8481/8413
Gaskets of Cork or Plastic	Gasket Kits of Dissimilar Materials	8484
Intake & Exhaust Manifolds	Gears & Gearing	8483
Intake & Exhaust Valves	Pulleys & Non-magnetic Flywheels	8483
Oil Pans	Pumps	8413
Pistons	Rubber hoses, belts & gaskets	4009/4010/4016
Piston Rings & Pins	Spark plugs, Glow Plugs & Coils	8511
Rocker Arms	Timing Chain	7315
Valve Lifters & Seats	Valves, Other than Intake & Exhaust	8481

ADDITIONAL INFORMATION

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant

information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. To use the CEBB, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 440–6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 440–6236.

The Internet

The Customs home page on the Internet's World Wide Web—which began public operation on August 1, 1996—will also provide the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The home page will post timely information including proposed regulations, news releases, Customs publications and notices, *etc.*, which may be printed or "downloaded" to your own PC. Not all features may be available in the beginning. The Customs Service does not charge the public for this service, although you will need Internet access to use it. The Internet address for Customs home page is **http://www.customs.ustreas.gov**.

Customs Regulations

The current edition of *Customs Regulations of the United States*, in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1996 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1995 through March, 1996 is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions ("Customs Bulletin")* is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade and Customs related decisions of the U.S. Court of Appeals for the Federal

Circuit. Bound volumes are issued annually. The Customs Bulletin is available for sale from the Superintendent of Documents.

Video Tapes

The U.S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in understanding the new ***Rules of Origin for Textiles and Apparel Products*** which became effective on July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for $20.00 (U.S. funds) directly from the Customs Service. If you require further information, or would like to purchase one or more tapes, please forward your written request to: U.S. Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

Informed Compliance Publications

The U.S. Customs Service has also prepared other Informed Compliance publications in the *What Every Member of the Trade Community Should Know About:* series, which are available from the Customs Electronic Bulletin Board and the Customs Home Page (see above). As of the date of this publication, the following booklets were available:

- *Fibers and Yarns*
- *Buying and Selling Commissions*
- *NAFTA for Textiles and Textile Articles*
- *Raw Cotton*
- *Customs Valuation*
- *Textile and Apparel Rules of Origin*
- *Mushrooms*
- *Marble*
- *Peanuts*
- *Caviar*
- *Bona Fide Sales and Sales for Exportation*

Check the Customs Electronic Bulletin Board and the Customs Home Page for more recent publications.

Other Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000–152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S.

Customs Service, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

What Every Member of the
Trade Community Should Know About:

Vehicles, Parts and Accessories Under the Harmonized Tariff Schedule

An Advanced Level
Informed Compliance Publication of the
U.S. Customs Service

May, 1997

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are ***"informed compliance"*** and ***"shared responsibility."*** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The Commercial Operations Division, Detroit, Michigan, and the National Commodity Specialist Division of the Office of Regulations and Rulings has prepared this publication on ***Classification of Vehicles, Parts and Accessories***, as part of a series of informed compliance publications regarding the classification of imported merchandise. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

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The Harmonized Tariff Schedule of the United States (HTSUS), which is the official classification book used by U.S. Customs to classify imported merchandise, is a rather intimidating piece of work. It runs over 800 pages in length and has more than 10,000 different ten-digit tariff classifications in it.

Vehicles (other than railway or tramway rolling-stock) are provided for in Chapter 87. Many of the parts and accessories for such vehicles are also classifiable in Chapter 87, but there are many exceptions. Knowing which tariff classification applies to a given article is not as easy as one might think. For one thing, there are some General Rules of Interpretation (GRIs for short) listed in the front of the book which govern tariff classification. For another, the legal notes to Section XVII, which includes Chapter 87, exclude many items which would seemingly go there.

The goal of this booklet is to explain in simple layman's language how such vehicles and their parts and accessories are classified so that importers, exporters, customs brokers and other Customs officers will know how to classify them correctly.

Before getting into specifics, however, a clarification of what constitutes a "vehicle" would appear to be in order. The term "vehicle" is derived from the Latin word "vehiculum." It means a carriage or conveyance. The type of vehicles which go in Chapter 87 are, **for the most part**, those whose main function is to transport people or things from one place to another (three exceptions: tractors, special purpose motor vehicles and armored fighting vehicles). Mobile machines in which a propelling base forms an integral part of a machine designed for handling, excavating, etc. are *not* considered for tariff purposes to be vehicles of Chapter 87. Fork lift trucks, excavators, bulldozers, front end loaders and the like are classifiable in Chapter 84 along with other "Machinery and Mechanical Appliances."

THE HEADINGS OF CHAPTER 87

Altogether there are sixteen different four-digit tariff headings or main groupings in Chapter 87. These are:

8701	Tractors (other than tractors of heading 8709)
8702	Motor vehicles for the transport of ten or more persons, including the driver
8703	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars
8704	Motor vehicles for the transport of goods
8705	Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, wreckers, mobile cranes, fire fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units)
8706	Chassis fitted with engines, for the motor vehicles of headings 8701 to 8705

8707	Bodies (including cabs), for the motor vehicles of headings 8701 to 8705
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705
8709	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles
8710	Tanks and other armored fighting vehicles, motorized, whether or not fitted with weapons, and parts of such vehicles
8711	Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars
8712	Bicycles and other cycles (including delivery tricycles), not motorized
8713	Invalid carriages, whether or not motorized or otherwise mechanically propelled
8714	Parts and accessories of vehicles of headings 8711 to 8713
8715	Baby carriages (including strollers) and parts thereof
8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof

For those concerned with things "automotive," the principal headings of interest are 8701–8708. Heading 8701 covers all tractors except those of heading 8709 (the term "tractors" is defined in Note 2 to Chapter 87 as "vehicles constructed essentially for hauling or pushing another vehicle, appliance or load" and includes, in subheading 8701.20, road tractors which pull semi-trailers). Heading 8702 covers motor buses and coaches. Heading 8703 covers other vehicles for transporting people, like cars. Heading 8704 covers vehicles for transporting goods. Heading 8705 covers special purpose motor vehicles **other than those principally designed for the transport of persons or goods** (e.g. garbage trucks, even those with compactors, would go in 8704 if their principal function is to transport trash). It does not, however, cover self-propelled wheeled machines in which the chassis and the working machine are specially designed for each other and form an integral mechanical unit (road graders go in Ch. 84). Heading 8706 covers chassis with engines for all the foregoing vehicles, but does not include chassis fitted with engines **and** cabs (they go in headings 8702–8704). Heading 8707 covers bodies, including cabs, for the foregoing vehicles. And lastly, heading 8708 covers parts and accessories for these motor vehicles. In general, articles are "parts" if they cannot be used on their own but must be combined with other articles to form goods capable of fulfilling an intended function; "accessories" are articles that are not needed to enable the goods with which they are used to fulfill their intended function.

Pretty simple stuff, right? Wrong! As anyone who has followed the ups and downs of sport utility vehicle classification over the years knows, it's not so easy sometimes to determine which heading a given article should have for tariff purposes. If a multipurpose vehicle is suitable for carrying both passengers and cargo, and has characteristics associated with both cars and trucks, should it go in 8703 or 8704? U.S. Customs for many years considered **two**-door sport utility vehicles like the Nissan Pathfinder to be motor vehicles for the transport of goods, which made them subject to a 25% duty. This position was eventually overturned by the courts, however, and such vehicles are now classifiable with motor cars and other motor vehicles principally designed for the transport of persons.

Parts and Accessories

As complicated as vehicle classification can be, however, it's usually much easier than trying to classify parts and accessories for them. For while heading 8708 reads "Parts and accessories of the motor vehicles of headings 8701 to 8708," it does not cover all such parts.

In order for motor vehicle parts or accessories to be classifiable under 8708, they must satisfy **all** three of the following conditions:

1. They must be identifiable as being suitable for use solely or principally with motor vehicles of heading 8701–8705.
2. They must not be excluded by Section XVII, Note 2.
3. They must not be more specifically provided for elsewhere in the HTSUS.

As we said in the beginning, classification is governed by six GRIs. Of these, the most important is the first one. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. If you can classify goods using it, there is no need to refer to the others which follow in sequential order.

Since the provisions for motor vehicles in Chapter 87 are incorporated in Section XVII of the HTSUS, the legal notes to that section are particularly important. It is from there, in fact, that the first two conditions given above are derived. The third condition is based on GRI 3(a) which states that when goods are classifiable under two or more headings, the heading which provides the most specific description shall be preferred. The Additional U.S. Rules of Interpretation, which follow the GRIs in the book, reinforce this principle by providing in paragraph 1(c) that a provision for parts of an article covers products solely or principally used as a part of such articles, but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such part or accessory.

Unless one is dealing with parts which have multiple applications on motor vehicles of Chapter 87 **and** machines of Chapter 84, the first of these conditions is not likely to be a problem. Most parts used on cars and trucks are, after all, usually used only on motor vehicles—not other machines. The second condition, however, is another story. The exclusions listed in the notes to Section XVII are many and, to the untrained

observer, easy to overlook. Among other things, these notes exclude all joints, washers or the like **of any material**; articles of vulcanized rubber other than hard rubber; parts of general use, as defined in Note 2 to Section XV (whether made of base metal or plastic); and gears and other transmission equipment of heading 8483 which are integral components of engines or motors (clutches, gears, torque converters and other vehicle transmission equipment of heading 8483 which are **not** integral components of engines or motors go in 8708).

In a similar vein, one must also keep in mind that some automotive parts and accessories which **are** specifically provided for in other chapters may still be classifiable in heading 8708 if they are excluded by other section or chapter notes. One not only has to be aware of Section XVII's notes, but those of other sections and chapters that might apply. Chapter 39, for example, has a note which excludes parts of vehicles of Section XVII. Consequently, a plastic hose or tube which is a finished auto part would go under 8708 rather than 3917, which is a more specific provision.

It is also important to keep in mind that legal notes in one place may be offset in another section or chapter. The aforementioned Chapter 39 legal note excluding parts of Section XVII vehicles does not mean that plastic gaskets or plastic mountings and fittings for doors, windows and coachwork go in 8708. Such articles are excluded from Chapter 87 by the exclusionary notes to Section XVII which cover "joints, washers or the like of any material" and "parts of general use."

Parts of General Use

The term "parts of general use," incidentally, is one that is often misunderstood by importers and exporters who come across the phrase. Contrary to what a lot of people think, it does **not** mean "parts which have multiple applications" or "parts which have no principal use." Made-to-order parts which are suitable for only one particular application and are not good for anything else can still be "parts of general use." The term has a very precise legal definition which may be found in Note 2 to Section XV. For purposes of Section XVII, it means the following types of articles whether made of iron or steel, some other base metal, or plastic:

I. Articles of heading:

7307	Tube or pipe fittings (e.g. couplings, elbows, etc.)
7312	Stranded wire, ropes, cables, slings and the like, not electrically insulated
7315	Chain and parts thereof
7317	Nails, tacks, drawing pins, corrugated nails, staples (other than those of heading 8305) and similar articles
7318	Screws, bolts, nuts, coach screws, rivets, cotters, cotter pins, washers and similar articles

II. Springs and leaves for springs, other than clock or watch springs

III. Articles of heading:

8301 Padlocks and locks; clasps and frames with clasps, incorporating locks; keys and parts of the foregoing articles

8302 Mountings, fittings and similar articles suitable for furniture, doors, windows, coachwork, trunks, chests, or the like; hat racks, hatpegs, brackets and similar fixtures; castors; automatic door closers

8306 Photograph, picture or similar frames; mirrors; and parts thereof

8308 Clasps, frames with clasps, buckles, buckle clasps, hooks, eyes, eyelets and the like and parts thereof of a kind used for clothing, footwear, awnings, handbags, travel goods or other made up articles; tubular or bifurcated rivets; beads and spangles

8310 Sign plates, name plates, address plates and similar plates, numbers, letters and other symbols, and parts thereof, except for those of heading 9405 (which covers illuminated signs, illuminated nameplates and the like, having a permanently fixed light source)

PARTS PROVIDED FOR ELSEWHERE

Of all the classification mistakes made by persons who are trying to classify auto parts using the HTSUS, the one most frequently encountered by U.S. Customs import specialists has to do with the third condition mentioned earlier. To whit, classifying parts and accessories under heading 8708 when they are more specifically provided for elsewhere (and there are no legal notes requiring that they go in Chapter 87). While a complete listing of all such parts is beyond the scope of this booklet, a partial list of some of the more common ones and their appropriate headings appears below:

Description	*HTS*
Air conditioners	8415
Alternators	8511
Antennas	8529
Antifreeze	3820
Batteries	8507
Bearings, ball and/or roller	8482
Bearing housings and housed bearings	8483*
Bearings, plain shaft type	8483*
Belts of rubber	4010
Bodies (including cabs)	8707
Bolts & other fasteners of steel	7318
Brake friction material & articles, not mounted, of asbestos, some other mineral substance, or cellulose	6813
Bushings (if plain shaft bearings)	8483*
Cable, electrical	8544
Cable, non-electrical, of steel	7312
Capacitors	8532
Camshafts & crankshafts	8483

Description	*HTS*
Carpets, tufted	5703
Carpets, woven, not tufted or flocked	5702
Chain of steel (including timing chain)	7315
Chain sprockets	8483*
Chassis fitted with engine	8706
Cigarette lighters	9613
Circuit breakers	8536
Clamps of steel for hoses	7326
Clocks	9104
Clutch friction material & articles, not mounted, of asbestos, some other mineral substance, or cellulose	6813
Compressors	8414
Control Boxes & panels	8537
Decals	4908
Defrosters & demisters	8512
Distributors & other ignition/starting equipment	8511
Engines, diesel	8408
Engines, gasoline	8407
Engine parts, not provided for elsewhere	8409
Fans & Blowers	8414
Filters	8421
Fittings & mountings of base metal for doors & windows	8302
Fittings of steel for pipes & tubes	7307
Flexible tubing of base metal	8307
Flywheels	8483*
Floor mats of rubber	4016
Fuel injectors for gasoline engines	8481
Fuel injectors for diesel engines	8413
Fuses & similar electrical apparatus	8536
Gauges	9026
Gaskets, washers & other seals of asbestos	6812
Gaskets, washers & other seals of cork	4504
Gaskets, washers & other seals of paper	4823
Gaskets, washers & other seals of plastic	3926
Gaskets, washers & other seals of rubber	4016
Gaskets made of metal sheeting combined with other material or other layer(s) of metal	8484
Gasket kits with gaskets of dissimilar composition	8484
Gears	8483*
Generators	8511
Handles & knobs of plastic	3926
Handles & knobs of rubber	4016
Harnesses, electrical	8544
Heaters, electrical	8516
Hoists, jacks, winches & other lifting equipment	8425
Horns & other sound or visual signaling equipment	8512
Hoses of rubber	4009
Hydraulic cylinders	8412
Integrated circuits	8542
Lamps	8539

Description	*HTS*
Lenses of glass, signaling & optical	7014
Lighting equipment	8512
Locks & keys	8301
Magnets & electromagnetic articles	8505
Manuals & other printed matter	4911
Mirrors	7009
Motors, electric	8501
Motors, hydraulic or pneumatic	8412
Nameplates, signplates, etc. of base metal	8310
Nuts & other fasteners of steel	7318
Pins, cotter or dowel, & other fasteners of steel	7318
Printed circuit boards, blank	8534
Printed circuit boards, populated	8537
Pulleys	8483
Pumps for air	8414
Pumps for liquids	8413
Radios, with or without tape & CD players	8527
Relays & similar electrical apparatus	8536
Resistors, electrical	8533
Rivets of steel, except the bifurcated or tubular kind	7318
Rivets of base metal, bifurcated or tubular kind	8308
Screws & other fasteners of steel	7318
Seals of plastic	3926
Seals of rubber	4016
Seats, cushions & other articles of furniture	9401
Shafts, transmission	8483*
Sparkplugs	8511
Speedometers & odometers	9029
Springs of steel	7320
Springs of copper	7416
Starter motors	8511
Studs & other fasteners of steel	7318
Switches & similar electrical apparatus	8536
Tape & CD players without a radio	8519
Thermostats, without valves	9032
Tires	4011
Tool kits consisting of different kinds of hand tools	8205
Transformers, electrical	8504
Turbochargers	8414
Universal joints	8483*
Valves	8481
Voltage regulators	8511
Washers & other fasteners of steel	7318
Windshield window safety glass	7007
Windshield wipers	8512
Wire & wiring sets, electrical	8544
Wrenches	8204

* Automotive parts provided for in heading 8483 are only classifiable there if they are integral parts of engines or motors. Clutches, torque converters and other power transmission equipment of 8483, which are not integral parts of engines or motors, fall under heading 8708 per Note 2(e) to Section XVII and the Explanatory Notes to 8483.

When consulting the above list, please keep in mind that it is being offered for reference purposes only and does not reflect the official position of how U.S. Customs thinks every part described should be classified. A chassis fitted with an engine and a cab, for example, is considered an unfinished vehicle rather than a chassis for purposes of 8706. Non-electrical steel cable of specific length and thickness which has special fittings and has assumed the character of articles of other headings may go in 8708 rather than 7312. Populated printed circuit boards, control modules and sensors which perform a measuring, checking, automatic regulating or controlling function with respect to liquids, gases, temperature, etc. may be classifiable under headings 9026–9032 rather than 8537. Valves are provided for in heading 8481, but intake and exhaust "valves" for internal combustion piston engines are classifiable under 8409 because they do not incorporate a valve body. Thermostats which consist of a valve are considered valves of 8481—not thermostats of 9032. Clutch facings containing mineral substances which are not the principal or fundamental substances do not have a basis of mineral substances and would fall under 8708 rather than 6813. Electrical cable or harnesses with lamp sockets and light bulbs may be lighting/signaling equipment of 8512 (or even auto parts of 8708 if they contain other electrical apparatus like switches) rather than insulated electric conductors of 8544. Also, be aware that parts of parts are usually provided for within the same heading or a subsequent one in close proximity, but some components may be specifically provided for elsewhere or precluded by section or chapter notes (e.g. windshield wipers go in 8512, but the rubber refill blades for them go under 4016).

The Explanatory Notes

If you are in doubt about how something should be classified, it's always a good idea to consult the Explanatory Notes to the Harmonized Commodity Description and Coding System if they are available. The so-called Explanatory Notes are a four-volume reference set which represents the official interpretation of the tariff at the international level. They facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

Good Invoicing is Essential

Even if a person knows the GRIs like his own social security number and is aware of all the relevant legal and explanatory notes, classification is just guesswork if invoices do not give complete and accurate descriptions of what is being imported. This is especially true where there is a lack of uniformity between Customs and trade definitions. Fasteners are a good case in point. Many shippers of automotive parts consider just about any threaded fastener that can be used with a nut to be a "bolt." To Customs and the fastener industry, however, a threaded fastener which is used with a nut **may** be a "screw" that has a duty rate which is more than eight times higher! According to the Explanatory Notes for heading 7318, a bolt is designed to engage in a nut, whereas

screws for metal are more usually screwed into a hole tapped in the material to be fastened. Screws are therefore generally threaded throughout their length, whereas bolts usually have a part of the shank unthreaded. These are, however, just a few of the characteristics that need to be examined. Both Customs and the fastener industry rely on a whole series of primary and supplemental criteria to distinguish a bolt from a screw.

Some other terms for auto parts that can be a problem because they are so vague are "actuator," "bearing," "gasket," "seal," "solenoid," "valve," and "washer." Such descriptions by themselves are too broad to classify the goods properly, and there is more than one classification and duty rate which could apply. Without more specific information, Customs officers may assume the classification with the highest duty rate is the right one—to the detriment of the party paying the duties. Needless to say, it is to the shipper and importer's advantage to make sure such articles are described fully enough to avoid further inquiries or unwarranted additional duty assessments from Customs.

APTA AND NAFTA

No discussion of automotive classification would be complete, of course, without some mention of the Automotive Products Trade Act (APTA) of 1965 and the new North American Free Trade Agreement (NAFTA) which went into effect on January 1, 1994. Under APTA, motor vehicles and original motor vehicle equipment which met the criteria for "Canadian articles" and fell in certain designated tariff provisions have been eligible for duty free entry. The eligible provisions are indicated in the HTSUS by a "B" in the Special Rates of Duty column. The rules of eligibility are far too complex to try to explain here, but are spelled out in detail in General Note 5 of the HTSUS and Part 10, Section 10.84, of the Customs Regulations of the United States (title 19 in the Code of Federal Regulations).

NAFTA is significant because it (1) reduced the rates of duty on originating Canadian service parts which were not eligible for APTA because they did not go into original equipment manufacture (OEM) use and (2) extended preferential trade benefits to Mexico. The letters "CA" in the Special Rates of Duty column of the HTSUS indicate the free or reduced rate that applies to "originating" Canadian parts, while a "MX" denotes the free or reduced rate that applies to Mexican parts which qualify. Many Canadian service parts may also be eligible for subheading 9905.00.00, a provision established under the U.S.-Canadian Free Trade Agreement which preceded NAFTA. It covers equipment intended for use in the repair or maintenance of motor vehicles provided for in headings 8702–8704 (excluding electric trolley buses and three-wheeled vehicles) and of automobile truck tractors principally designed for the transportation of persons or goods. It does not, however, cover all repair or maintenance parts—just those which are enumerated by subheading number under that provision. The list covers 140 specific subheadings for parts which are classified from 3917.21 to 9606.22. Any

parts classified elsewhere and parts of Mexican origin are not entitled to the accelerated duty reduction accorded by this provision. One major change under NAFTA is that non-originating articles can be exported to Canada for repairs or alterations and receive on their return duty-free treatment (if repaired or altered under warranty) or reduced FTA rates (if not covered by a warranty), **regardless of their origin**. Goods repaired or altered in Mexico, whether or not pursuant to a warranty, qualify for duty-free entry. No certificate of origin is required, but the regulations require declarations from the person performing such repairs or alterations, and the owner, importer, consignee or an agent thereof to substantiate the facts of the transaction. These latter documents may, however, be waived by Customs when, because of the nature of the goods or production of other evidence, it is apparent that the goods qualify.

As with APTA, the rules of NAFTA eligibility are too complicated to deal with here, but they are explained in great detail in General Note 12 of the HTSUS and in Part 181 of the Customs Regulations (note: the NAFTA regulations covering country of origin marking are in Part 102).

If after consulting these sources you are still confused about such concepts as "rules of origin," "regional value content," "preference criterion," the difference between the "transaction value method" and the "net cost method," etc., U.S. Customs has put out an excellent handbook on the subject called "The North American Free Trade Agreement—A Guide to Customs Procedures" (Customs Publication No. 571). It's available at your local Government Printing Office bookstore for about $4.00, or may be ordered directly from the U.S. Government Printing Office in Washington. The mailing address for the latter is: U.S. Government Printing Office; Superintendent of Documents; Mail Stop: SSOP; Washington, DC 20402–9328.

Foreign Trade Zones

One additional final topic we would be remiss not to mention is Foreign Trade Zones (FTZs). FTZs, which are sometimes known internationally as "free zones" or "free trade zones," are enclosed geographic areas where imported and domestic merchandise may be brought without being subject to the Customs laws of the United States. While in an FTZ, goods may be stored or processed through a variety of operations, and later be re-exported without payment of duties. Duties and taxes are only payable if and when the imported merchandise is entered into U.S. commerce for consumption. Unlike the zones established in most other countries, U.S. zone importers have the advantage of being able to choose when the goods enter the zone whether they want them to be assessed the duty rate of the merchandise in its condition at the time it is placed in the zone (privileged foreign status) or in its condition when it is entered for consumption from the zone (nonprivileged foreign status). The first FTZ was established on Staten Island in 1936. At last count, there were over 130 public zones and 90 subzones in the United

States (a subzone is a special-purpose operation run by a single firm). For more on this subject, see Part 146 of the Customs Regulations and the General Regulations Governing Foreign Trade Zones (15 C.F.R. Part 400).

This booklet was prepared to assist importers, exporters and other members of the international trade community better understand the somewhat complex, and at times confusing, classification provisions and rules that apply to motor vehicles, parts and accessories. Hopefully we have cleared up some misconceptions and provided a reference guide which will prove to be useful to the reader in the future.

ADDITIONAL INFORMATION

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. To use the CEBB, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 440–6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 440–6236.

The Internet

The Customs home page on the Internet's World Wide Web—which began public operation on August 1, 1996—will also provide the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The home page will post timely information including proposed and final regulations, rulings, news releases, Customs publications and notices, *etc.*, which may be printed or "downloaded" to your own PC. The Customs Service does not charge the public for this service, although you will need Internet access to use it. The Internet address for Customs home page is **http://www.customs.ustreas.gov**.

Customs Regulations

The current edition of *Customs Regulations of the United States*, in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1996 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April,

1995 through March, 1996 is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions ("Customs Bulletin")* is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade and Customs related decisions of the U.S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The Customs Bulletin is available for sale from the Superintendent of Documents.

Video Tapes

The U.S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in understanding the new ***Rules of Origin for Textiles and Apparel Products*** which became effective on July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for $20.00 (U.S. funds) directly from the Customs Service. If you require further information, or would like to purchase one or more tapes, please forward your written request to: U.S. Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

On Tuesday, March 18, 1997, Customs started filling orders for its video tape entitled "Customs Compliance: Why You Should Care." This 30 minute tape is divided into two parts. Part I, almost 18 minutes in length, is designed to provide senior executives and others in importing and exporting companies with an overview of some significant features of the Customs "Modernization Act" and some major reasons for adopting new strategies for minimizing legal exposure under this Act. Part II is intended primarily for compliance officers, legal departments and company officers involved in importing and exporting. This latter Part, approximately 12 minutes in length, explains why Customs and the trade can benefit from sharing responsibilities under Customs laws and it provides viewers with some legal detail relating to record keeping, potential penalties for non-compliance, and Customs Prior Disclosure program.

Part I features Customs Commissioner George Weise, Assistant Commissioner for Regulations and Rulings Stuart Seidel, and Motorola's

Vice President and Director of Corporate Compliance, Mr. Jack Bradshaw. Assistant Commissioner Seidel is the only speaker in Part II.

The tape is priced at $15.00 including postage. New orders, complete with payment in the form of a check or money order, should be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Operational Oversight Division, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

Informed Compliance Publications

The U.S. Customs Service has also prepared other Informed Compliance publications in the *What Every Member of the Trade Community Should Know About:* series, which are available from the Customs Electronic Bulletin Board and the Customs Home Page (see above). As of the date of this publication, the following booklets were available:

- *Fibers and Yarns*
- *Buying and Selling Commissions*
- *NAFTA for Textiles and Textile Articles*
- *Raw Cotton*
- *Customs Valuation*
- *Textile and Apparel Rules of Origin*
- *Mushrooms*
- *Marble*
- *Peanuts*
- *Caviar*
- *Bona Fide Sales and Sales for Exportation*
- *Caviar*
- *Granite*
- *Internal Combustion Piston Engines*
- *Vehicles, Parts and Accessories*

Check the Customs Electronic Bulletin Board and the Customs Home Page for more recent publications.

Other Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000–152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, N.W., Washington, DC 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy

may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

What Every Member of the
Trade Community Should Know About:

ARTICLES OF WAX, ARTIFICIAL STONE AND JEWELRY

Under the Harmonized Tariff Schedule

An Advanced Level
Informed Compliance Publication of the
U.S. Customs Service

August 1997

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are ***"informed compliance"*** and ***"shared responsibility."*** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The National Commodity Specialist Division of the Office of Regulations and Rulings has prepared this publication on Articles of Wax, Artificial Stone and Jewelry, as part of a series of informed compliance publications regarding the classification of imported merchandise. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

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HEADING 9602

Heading 9602 of the Harmonized Tariff Schedule of the United States (HTS) provides for worked vegetable or mineral carving material and articles of these materials; molded or carved articles of wax, of stearin, of natural gums or resins, of molded pastes, and other molded or carved articles, not elsewhere specified or included; worked, unhardened gelatin (except gelatin of heading 3503) and articles of unhardened gelatin.

By definition, this provision does not include articles of cement, of concrete or articles of artificial stone of heading 6810; articles of jewelry and parts thereof of precious metal or of metal clad with precious metal of heading 7113 or imitation jewelry of heading 7117.

Articles of imitation jewelry are specifically excluded under the Explanatory Notes. EN 96.01 and 96.02 (pp 1723 and 1726) noted.

Merchandise classified in heading 9602 generally consists of vegetable or mineral carvings such as small ornaments (e.g., statuettes); small boxes and caskets; and molded and carved articles of wax such as artificial honeycombs, molded shapes for electroplating, imitation wax flowers and fruit other than those of heading 6702, wax busts, heads, figures and statuettes, etc.

This merchandise may be composed partly of precious metal or metal clad with precious metal, or of natural or cultured pearls or precious or semi-precious stones (natural, synthetic or reconstructed), only when these components are minor constituents (e.g., monograms, initials, ferrules, rims, etc.). When the precious or semiprecious metal, pearls or precious or semi-precious stones constitute more than minor constituents, the merchandise must be classified in Chapter 71, not heading 9602.

HEADING 6810

Worked building stone is classifiable in heading 6802 assuming the stone is natural. However, **artificial stone is classifiable in heading 6810. Artificial stone is formed when pieces of natural stone or crushed or powdered natural stone (e.g., limestone, marble, etc.) is agglomerated (bound) with plastics, cement, lime or other binders.** See the Explanatory Notes to headings 6810 and 6802 (pp 989 and 982). In artificial (agglomerated) stone, the binding material and the stone run through the body of the item. (In addition to artificial stone, heading 6810 also covers articles of concrete and articles of cement.)

In certain plastics products, stone material may merely serve as filler. This type of article (which should not be confused with agglomerated stone) is classifiable as plastics in Chapter 39 even though the plastics material and stone material may be blended together through the body of the product.

While agglomerated **stone** is covered by Heading 6810, when a material other than stone is blended with another substance, heading 6810

will not apply. For example, if a mineral substance other than stone or a synthetic chemical is blended with plastics material, we must make a determination regarding the component which represents the essential character of this product. Often this component will be the plastics material (based on the larger percentage of plastics present in the product) and the merchandise will be classified in Chapter 39. Heading 6810 will not apply if there is no stone in the product. Plastics products classifiable in Chapter 39 should not be entered in heading 6810.

The stone material within an artificial stone item classifiable in heading 6810 would be in the form of pieces, powder, granules or chippings of stones covered by Chapter 25 of the HTS (marble, limestone, granite, etc.). **Clearly an article of precious or semiprecious stone would be precluded from classification in Chapter 68.** Notes 1(a) to Chapter 71 and 1(d) to Chapter 68 indicate that Chapter 71 takes precedence over Chapter 68, and an article of precious or semiprecious stone would be covered by Chapter 71. The Annex to the Chapter 71 Explanatory Notes lists the items regarded as precious or semiprecious stones.

Articles of precious or semiprecious stone should not be entered in heading 6802 (which covers worked building stone and articles thereof), heading 6810 (which covers articles of artificial stone, as well as articles of cement or concrete), heading 6815 (which covers other worked mineral substances) or any other provision of Chapter 68.

Articles of worked vegetable or mineral carving material, molded or other carved articles of wax and other molded or carved articles covered by heading 9602 should not be confused with the articles of artificial stone classifiable in heading 6810. Items of agglomerated stone classifiable in heading 6810 should not be entered in heading 9602, items classifiable in heading 9602 should not be entered in heading 6810.

The classification of floor and wall tiles of agglomerated stone is dependent on the precise type of binding material used in the products. **Subheading 6810.19.12 provides for floor and wall tiles of stone agglomerated with binders other than cement (e.g., plastics). Floor and wall tiles of stone agglomerated with cement are classifiable in subheading 6810.19.14.**

CHAPTER 71

For the purposes of heading 7113, the expression "articles of jewelry" means:

(a) any small objects of personal adornment, for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia.

(b) articles of personal use of a kind normally carried in the pocket in the handbag or on the person such as cigarette cases, powder boxes, chain purses or pill boxes.

For the purposes of heading 7117, the expression "imitation jewelry" means articles of (a) above but not including any articles incorporating natural or cultured pearls, precious or semiprecious stones or precious metal or metal clad with precious metal. Precious metal includes gold, silver or platinum. Heading 7117 includes imitation jewelry of any material other than precious metal or precious or semiprecious stones such as base metal, plastic, wood, etc.

See Note (9) to Chapter 71 (p 71–2).

The Importer's Responsibilities

Since the enactment of the Customs Modernization Act in December 1993, the legal burden of correctly classifying merchandise has shifted from the Customs Service to the importer. It is the importer's responsibility to determine the precise composition of the merchandise prior to importation and entry. He or she should obtain this information from the foreign supplier.

The importer must not confuse the articles of vegetable or mineral carving material described in heading 9602 with the articles of agglomerated stone covered by heading 6810. Articles of precious or semiprecious stone are classifiable in Chapter 71 and should never be entered in Chapter 68 or heading 9602.

Invoices must provide a precise description of the product's composition. The precise geological name of any stone product (including any article of precious or semiprecious stone) should be indicated as well as the exact manner in which the product was worked. If a product is agglomerated with a binding material, the invoice should indicate this fact and identify the binding material.

If a product consists of worked vegetable or mineral carving material, wax, stearin, etc., the invoice should provide an exact description of the article's composition.

If a product has already been imported and the importer has questions regarding the classification, he should seek advice from the commodity specialist team at the port of entry. **Prior to the importation of the merchandise, the importer may request a ruling on the classification of the product from the National Commodity Specialist Division in New York. A ruling request should include information on the precise composition of the merchandise and the exact manner in which it is worked, as well as a sample of the product.**

Additional Information

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The

CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. To use the CEBB, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 440–6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 440–6236.

The Internet

The Customs home page on the Internet's World Wide Web—which began public operation on August 1, 1996—will also provide the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The home page will post timely information including proposed and final regulations, rulings, news releases, Customs publications and notices, *etc.*, which may be printed or "downloaded" to your own PC. The Customs Service does not charge the public for this service, although you will need Internet access to use it. The Internet address for Customs home page is **http://www.customs.ustreas.gov**.

Customs Regulations

The current edition of *Customs Regulations of the United States*, in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1996 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1995 through March, 1996 is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions ("Customs Bulletin")* is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade and Customs related decisions of the U.S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The Customs Bulletin is available for sale from the Superintendent of Documents.

Video Tapes

The U.S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in understanding the new ***Rules of Origin for Textiles and Apparel Products*** which became effective on July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for $20.00 (U.S. funds) directly from the Customs Service. If you require further information, or would like to purchase one or more tapes, please forward your written request to: U.S. Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

On Tuesday, March 18, 1997, Customs started filling orders for its video tape entitled "Customs Compliance: Why You Should Care." This 30 minute tape is divided into two parts. Part I, almost 18 minutes in length, is designed to provide senior executives and others in importing and exporting companies with an overview of some significant features of the Customs "Modernization Act" and some major reasons for adopting new strategies for minimizing legal exposure under this Act. Part II is intended primarily for compliance officers, legal departments and company officers involved in importing and exporting. This later Part, approximately 12 minutes in length, explains why Customs and the trade can benefit from sharing responsibilities under Customs laws and it provides viewers with some legal detail relating to record keeping, potential penalties for non-compliance, and Customs Prior Disclosure program.

Part I features Customs Commissioner George Weise, Assistant Commissioner for Regulations and Rulings Stuart Seidel, and Motorola's Vice President and Director of Corporate Compliance, Mr. Jack Bradshaw. Assistant Commissioner Seidel is the only speaker in Part II.

The tape is priced at $15.00 including postage. New orders, complete with payment in the form of a check or money order, should be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Operational Oversight Division, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

Informed Compliance Publications

The U.S. Customs Service has also prepared other Informed Compliance publications in the *What Every Member of the Trade Community Should Know About:* series, which are available from the Customs Electronic Bulletin Board and the Customs Home Page (see above). As of the date of this publication, the following booklets were available:

- *Fibers and Yarns*
- *Buying and Selling Commissions*
- *NAFTA for Textiles and Textile Articles*
- *Raw Cotton*

- *Customs Valuation*
- *Textile and Apparel Rules of Origin*
- *Mushrooms*
- *Marble*
- *Peanuts*
- *Caviar*
- *Bona Fide Sales and Sales for Exportation*
- *Caviar*
- *Granite*
- *Internal Combustion Piston Engines*
- *Vehicles, Parts and Accessories*
- *Articles of Wax, Artificial Stone and Jewelry*

Check the Customs Electronic Bulletin Board and the Customs Home Page for more recent publications.

Other Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000–152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, N.W., Washington, DC 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs classification issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

What Every Member of the
Trade Community Should Know About:

Tariff Classification

Under the Harmonized Tariff Schedule

A Basic Level
Informed Compliance Publication of the
U.S. Customs Service

November 1997

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are ***"informed compliance"*** and ***"shared responsibility."*** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The International Agreements Staff of the Office of Regulations and Rulings has prepared this publication on Tariff Classification, as part of a series of informed compliance publications regarding the classification of imported merchandise. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

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TARIFF CLASSIFICATION

General Background

When goods are imported into the Customs Territory of the United States (the fifty states, the District of Columbia and Puerto Rico), they are subject to certain formalities involving the U.S. Customs Service. In almost all cases, the goods are required to be **"entered,"** that is, declared to the Customs Service, and are subject to detention and examination by Customs officers to insure compliance with all laws and regulations enforced or administered by the United States Customs Service. The required entry process may take the form of a simple "baggage declaration" (for individuals), or one of the many types of customs "entries," for consumption, warehousing, or transit. Low value importations may be subject to simplified or informal Customs clearance procedures. For example, certain low value mail importations may be declared on a sticker obtainable at post offices, while importations by individuals that do not exceed their duty-free personal exemptions may often be made by an oral declaration to a Customs officer. On the other hand, in most cases involving commercial goods, and some involving non-commercial importations, the importer or his agent must "enter" the goods by filing an electronic or paper "entry" to obtain release of the goods followed by an electronic or paper "entry summary." As part of the entry process, goods must be **"classified"** (determined where in the U.S. tariff system they fall) and their value must be determined.

Prior to enactment into law of the Customs Modernization Act (Title VI of the North American Free Trade Agreement Implementation Act, Public Law 104–183), on December 8, 1993, an importer was required to accurately describe the merchandise and tell Customs how much it cost. It was the Customs Service's responsibility to **"classify"** the goods and determine their **"value"** (appraise them to allow the correct duty to be applied).

Pursuant to the Customs Modernization Act, it is now the responsibility of the importer of record to use "reasonable care" to **"enter," "classify"** and **"value"** the goods and provide any other information necessary to enable the Customs Service to properly assess duties, collect accurate statistics, and determine whether all other applicable legal requirements are met. Classifying goods is important not only for duty purposes, but also to determine whether the goods are subject to quotas, restraints, embargoes or other restrictions. The act of classifying goods requires an importer to be familiar with the Harmonized Tariff Schedule of the United States, and its international counterpart, the Harmonized Commodity Description and Coding System. To assist in meeting the reasonable care requirement, importers may request binding rulings from the Customs Service or may use the services of an expert in Customs law and procedures to assist them. The Customs Service is responsible for fixing the final classification and valuation of the goods. The Customs Service performs this in a process called **"liquidation of the entry."** This publication explains the classification of

goods under the Harmonized Tariff Schedule of the United States. Customs valuation requirements are separately discussed in a companion publication entitled, ***What Every Member of the Trade Community Should Know about Customs Value*** which is available from the Customs Electronic Bulletin Board and Customs World Wide Web pages on the Internet (see the Appendix for information on accessing these sources and obtaining additional Customs Service publications).

The classification and valuation of goods is important. At a minimum, incorrect classification or valuation may lead to delays and increased duties plus interest. The failure to use reasonable care in either situation may also lead to detention or seizure and the imposition of civil or criminal penalties.

HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM

History And Development

Merchandise imported into a country is classified under a tariff system for such purposes as tariff (or duty) assessment and import restrictions. The movement of merchandise in international trade, however, would be very slow and costly if the merchandise had to be classified under differing tariff systems of various countries. Therefore, in the late 1960s, the major trading countries of the world decided that a modern and internationally recognized product or tariff classification system was needed in order to facilitate the international trade of merchandise. This new system was intended to be a single modern structure for product classification that would also be used for customs tariff-related statistical and transport-documentation purposes (i.e., to collect statistics on trade and for exportation purposes). Work on this new system began in the early 1970s (with participation by the United States) under the auspices of an international organization known as the "Customs Cooperation Council" (now informally known as the "World Customs Organization" or simply the "WCO") which is based in Brussels, Belgium.[1] This work resulted in the "Harmonized Commodity Description and Coding System" ("Harmonized System" or simply the "HS").[2] It went into effect internationally on January 1, 1988, with the entry into force of the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System Convention") to which the Harmonized System is appended as an annex.

Harmonized System Structure

The Harmonized System is a complete product classification system (i.e., it covers all imported merchandise). It was designed as a "core"

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[1] In June 1994, the informal working name "World Customs Organization" was adopted for the Customs Cooperation Council, in order to indicate more clearly its nature and world-wide status. The convention establishing the Customs Cooperation Council (signed in Brussels, Belgium on December 15, 1950) has not been amended, and the "Customs Cooperation Council" remains the official name.

[2] The Harmonized System was derived from the earlier "Customs Cooperation Council Nomenclature," which in turn was a new version of the older "Brussels Tariff Nomenclature."

system so that countries adopting it could make further subdivisions according to their particular tariff and statistical needs.

At the international level, the Harmonized System consists of approximately 5,000 article descriptions which appear as headings and subheadings. These descriptions are arranged into 97 chapters grouped into 21 sections. Chapter 77 is reserved for future use. Two final chapters, 98 and 99, are reserved for national use by individual countries in the coding of provisions other than according to the terms of the Harmonized System nomenclature (e.g., special tariff programs and temporary duty suspensions or increases). In addition, the Harmonized System also contains interpretative rules and section, chapter and subheading notes for use in the classification of merchandise.

Goods in trade generally appear in the Harmonized System in categories or product headings beginning with crude and natural products and continuing in further degrees of complexity through advanced manufactured goods. This progression is found within chapters and among chapters (e.g., live animals are classified in chapter 1, animals hides and skins in chapter 41 and leather footwear in chapter 64). These product headings are designed at the broadest coverage levels with 4-digit numerical codes (or headings) and, where deemed appropriate, are further subdivided into narrower categories assigned two additional digits (which comprise 6-digit numerical codes or subheadings). The first two digits of a 4-digit heading indicate the chapter in which the heading is found (e.g., heading 2106 is in chapter 21).

HARMONIZED SYSTEM CONVENTION OBLIGATIONS

At the essence of the Harmonized System are the headings and subheadings and their related numerical codes; the section, chapter and subheading notes; and the General Rules of Interpretation (for use in the interpretation of the Harmonized System). The basic obligation undertaken by the contracting parties to the Harmonized System Convention is that their customs tariff and foreign-trade statistical nomenclatures be in conformity with the Harmonized System.[3] Moreover, the contracting parties are obligated to use all the headings and subheadings without addition or modification together with their related numerical codes. Further, the parties are required to apply the General Rules of Interpretation and all section, chapter and subheading notes without modification to the scope of the sections, chapters, headings or subheadings of the Harmonized System. Each contracting party, however, is permitted to adopt in its national tariff system further detailed subdivisions for classifying goods (that is, for tariff, quota or statistical purposes) so long as any such subdivision is added and coded at a level beyond the 6-digit numerical code provided in the Harmonized System. Coding beyond the 6-digit level is usually at the 8-digit level and is generally referred to as the "national level."

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[3] Developing Country Exception: Article 4 of the Harmonized System Convention allows developing country contracting parties to delay their application of some or all of the subheadings of the Harmonized System for such a period as may be necessary with respect to their patterns of international trade or administrative resources.

It should be noted that many countries use the Harmonized System as the basis of their tariff systems who are not contracting parties to the Harmonized System Convention. The level of numerical coding based on the Harmonized System found in the tariff systems of such countries may vary. (Attached at the end of this document is a list of countries, territories or customs or economic unions using the Harmonized System (as of April 18, 1997)).

LEGAL TEXT OF THE HARMONIZED SYSTEM

When classifying merchandise under the Harmonized System, only the language of the General Rules of Interpretation, section, chapter and subheading notes, and the terms of the headings and subheadings are to be consulted and applied. They constitute the "legal text" (also known as the "nomenclature") of the Harmonized System.[4] The titles of sections, chapters and subchapters are provided for ease of reference only and have no legal significance.

HEADING AND SUBHEADING PROVISIONS

Merchandise may be specifically provided for or identified by its common, commercial or technical name in an article or product description (i.e., the text to a heading or subheading) in the Harmonized System. When merchandise is not so specifically provided for in the Harmonized System, the article description covering such merchandise is generally considered to be a "residual provision" (sometimes also referred to as a "basket provision") by use of the phrase "not elsewhere specified or included" or by the use of the term "other."

> *EXAMPLE:* "Residual" heading 2106 provides for "food preparations not elsewhere specified or included" in the Harmonized System. Within the subheading structure of that heading, there are two subheadings: subheading 2106.10 which specifically provides for "protein concentrates and textured protein substances" and subheading 2106.90 which provides for "other." Thus, all merchandise properly classified in heading 2106 that does not satisfy the terms of subheading 2106.10 would be classified in residual subheading 2106.90.

As evident from the above discussion, the Harmonized System covers all imported merchandise. Or, in other words, although not all goods are

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[4] *See* Article 1 (a) to the Harmonized System Convention.

specifically provided for, all goods are classifiable and have a place in the Harmonized System.

Heading No.	H.S. Code	
21.03		**Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard.**
	2103.10	– Soya sauce
	2103.20	– Tomato ketchup and other tomato sauces
	2103.30	– Mustard flour and meal prepared mustard
	2104.90	– Other
21.04		**Soups and broths and preparations therefor; homogenised composite food preparations.**
	2104.10	– Soups and broths and preparations therefor
	2104.20	– Homogenised composite food preparations
21.05	2105.00	**Ice cream and other edible ice, whether or not containing cocoa.**
21.06		**Food preparations not elsewhere specified or included.**
	2106.10	– Protein concentrates and textured protein substances
	2106.90	– Other

The Harmonized System

RATES OF DUTY

The Harmonized System Convention imposes no obligations on the contracting parties regarding rates of duty.[5] Rates of duty are left to each contracting party to apply based on national legislation. The rates of duty for most countries today are generally the result of trade agreements (i.e., either bilateral agreements or multilateral agreements such as World Trade Organization bound tariff-rate agreements).

INTERPRETATION OF THE HARMONIZED SYSTEM

GENERAL RULES OF INTERPRETATION

As indicated previously, the tariff classification of merchandise under the Harmonized System is governed by the principles set forth in the General Rules of Interpretation ("GRIs"). The GRIs are intended to be consulted and applied each time merchandise is to be classified under the Harmonized System. Accordingly, it is the GRIs that are the single set of legal principles that always govern the classification of merchandise under the Harmonized System. There are six GRIs in all.

When classifying merchandise, one must be aware that due to the hierarchical structure of the Harmonized System:

(1) merchandise must first be classified in the Harmonized System in the 4-digit heading whose terms most specifically describe the merchandise (unless otherwise required or directed by the GRIs); and

(2) only 4-digit headings are comparable (i.e., no consideration should be given to the terms of any subheading within any 4-digit

[5] *See* Article 9 to the Harmonized System Convention.

heading when considering the proper classification of merchandise at the 4–digit heading level).

EXAMPLE: An electric toothbrush could potentially be classified in heading 8509 as an electromechanical domestic appliance with self-contained motor and in heading 9603 as a brush. Within heading 9603, subheading 9603.21 provides for "toothbrushes." No consideration should be given to this subheading when comparing the terms of the headings to determine the appropriate heading for classification of the electric toothbrush (as merchandise must first be classified in the Harmonized System at the heading level by the terms of the headings).

General Rule of Interpretation No. 1

RULE 1. THE TABLE OF CONTENTS, ALPHABETICAL INDEX, AND TITLES OF SECTIONS, CHAPTERS AND SUB-CHAPTERS ARE PROVIDED FOR EASE OF REFERENCE ONLY; FOR LEGAL PURPOSES, CLASSIFICATION SHALL BE DETERMINED ACCORDING TO THE TERMS OF THE HEADINGS AND ANY RELATIVE SECTION OR CHAPTER NOTES AND, PROVIDED SUCH HEADINGS OR NOTES DO NOT OTHERWISE REQUIRE, ACCORDING TO THE FOLLOWING PROVISIONS: [that is, GRIs 2 to 6].

GRI 1 takes precedence over the remaining rules. It requires that classification be determined first according to the terms of the headings of the Harmonized System and any relative section or chapter notes.

GRI 1 EXAMPLES:

EXAMPLE 1: Under GRI 1, if a provision specifically and completely describes a product, then the product would be classified in that provision (e.g., fresh grapes are classified under heading 0806 which provides for "grapes, fresh or dried"). In this situation, the product is classified by the terms of a heading.

EXAMPLE 2: Note 3 to Section XVI to the Harmonized System directs classification of composite machines described therein on the basis of the "principal function" of the machines. Under GRI 1, such machines are to be classified as so directed in that note. In this situation, the products are classified by the terms of a section note.

GRI 1 further states that if the texts of the headings and of the notes cannot, by themselves, determine the appropriate heading for classification of merchandise, then classification is to be determined by the appropriate GRIs that follow GRI 1 (i.e., GRIs 2 to 6).

General Rule of Interpretation No. 2

RULE 2. (a) ANY REFERENCE IN A HEADING TO AN ARTICLE SHALL BE TAKEN TO INCLUDE A REFERENCE TO THAT ARTICLE INCOMPLETE OR UNFINISHED, PROVIDED THAT, AS ENTERED, THE INCOMPLETE OR UNFINISHED ARTICLE HAS THE ESSENTIAL CHARACTER OF THE COMPLETE OR FIN-

ISHED ARTICLE. IT SHALL ALSO INCLUDE A REFERENCE TO THAT ARTICLE COMPLETE OR FINISHED (OR FALLING TO BE CLASSIFIED AS COMPLETE OR FINISHED BY VIRTUE OF THIS RULE), ENTERED UNASSEMBLED OR DISASSEMBLED.

(b) ANY REFERENCE IN A HEADING TO A MATERIAL OR SUBSTANCE SHALL BE TAKEN TO INCLUDE A REFERENCE TO MIXTURES OR COMBINATIONS OF THAT MATERIAL OR SUBSTANCE WITH OTHER MATERIALS OR SUBSTANCES. ANY REFERENCE TO GOODS OF A GIVEN MATERIAL OR SUBSTANCE SHALL BE TAKEN TO INCLUDE A REFERENCE TO GOODS CONSISTING WHOLLY OR PARTLY OF SUCH MATERIAL OR SUBSTANCE. THE CLASSIFICATION OF GOODS CONSISTING OF MORE THAN ONE MATERIAL OR SUBSTANCE SHALL BE ACCORDING TO THE PRINCIPLES OF RULE 3.

GRI 2 contains two sections: 2 (a) and 2 (b). These two sections deal with the classification of goods that as imported are (1) incomplete or unfinished, (2) unassembled or disassembled, or (3) composed of mixtures or combinations of materials or substances.

GRI 2 (a)

GRI 2 (a) has two parts. Part one deals with incomplete or unfinished goods and part two deals with unassembled or disassembled goods.

Part One

The first part of GRI 2 (a) extends the scope of any heading that refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, provided that, as presented, it has the "essential character" (which is discussed below) of the complete or finished article.

> *EXAMPLE:* A ceramic statuette of the Hokie Bird that will be painted after importation would still generally have the essential character of a ceramic statuette of heading 6913 (i.e., one would still recognize and identify the product as a ceramic statuette) and would therefore be classified pursuant to GRI 2 (a) as the finished product in heading 6913.

Part Two

The second part of GRI 2 (a) provides that complete or finished articles presented unassembled or disassembled (which may occur for reasons related to the packing, handling or transportation of the articles) are to be classified in the same heading as the assembled article. It also provides that incomplete or unfinished articles presented unassembled or disassembled are to be classified in the same heading as the complete or finished article provided that as presented they have the essential character of the complete or finished article (as provided for in the first part of GRI 2 (a)). (It should be noted, however, that under U.S. law this second part of GRI 2 (a) would only apply if all unassembled or

disassembled parts or components are presented for entry at the same time, i.e., goods destined for use in combination that are not imported together cannot be consolidated or grouped together for classification or tariff purposes.)

EXAMPLE: A shipment of an unassembled bicycle (containing all parts and components necessary to build a bicycle) would be classified in heading 8712 as an assembled, finished bicycle as if it were entered (or imported) as the assembled, finished bicycle.

GRI 2 (b)

GRI 2 (b) governs the classification (1) of mixtures and combinations of materials or substances and (2) of goods consisting of two or more materials or substances. The rule extends headings referring (1) to a material or substance to include mixtures or combinations of that material or substance with other materials or substances and (2) to goods of a given material or substance to include goods consisting wholly or partly of that material or substance (but only as long as another heading does not refer to the goods in their mixed or composite state). If the addition of another material or substance deprives the imported good of the character of the kind mentioned in the heading under consideration, however, then one must resort to GRI 3 for classification of the merchandise. Or, in other words, mixtures and combinations of materials or substances, and goods consisting of more than one material or substance, if upon initial consideration are potentially classifiable under two or more headings, they must be classified according to the principles of GRI 3.

EXAMPLE: Under GRI 2 (b), a stainless steel table fork with a handle that is coated with plastic would be classified in heading 7323 as a table or kitchen article of steel despite the plastic-coated handle (as it retains the character of a table or kitchen article of steel as mentioned in heading 7323). If a table fork, however, contained relatively equal amounts of stainless steel and plastic (e.g., the fork-tipped end is made entirely of plastic and the handle is made entirely of stainless steel), then the table fork would be potentially classifiable under two headings (i.e., heading 3924 as tableware or kitchenware of plastic and heading 7323 as a table or kitchen article of steel). (Or, contrasting this product with the initial one considered in this example, a fork consisting of relatively equal amounts of stainless steel and plastic does not have the character of a table or kitchen article of steel as mentioned in heading 7323.) In this situation, pursuant to GRI 2 (b), resort would need to be made to GRI 3 for classification of the product.

General Rule of Interpretation No. 3

RULE 3. WHEN, BY APPLICATION OF RULE 2(b) OR FOR ANY OTHER REASON, GOODS ARE, PRIMA FACIE, CLASSIFIABLE UNDER TWO OR MORE HEADINGS, CLASSIFICATION SHALL BE EFFECTED AS FOLLOWS:

(a) THE HEADING WHICH PROVIDES THE MOST SPECIFIC DESCRIPTION SHALL BE PREFERRED TO

HEADINGS PROVIDING A MORE GENERAL DESCRIPTION. HOWEVER, WHEN TWO OR MORE HEADINGS EACH REFER TO PART ONLY OF THE MATERIALS OR SUBSTANCES CONTAINED IN MIXED OR COMPOSITE GOODS OR TO PART ONLY OF THE ITEMS IN A SET PUT UP FOR RETAIL SALE, THOSE HEADINGS ARE TO BE REGARDED AS EQUALLY SPECIFIC IN RELATION TO THOSE GOODS, EVEN IF ONE OF THEM GIVES A MORE COMPLETE OR PRECISE DESCRIPTION OF THE GOODS.

(b) MIXTURES, COMPOSITE GOODS CONSISTING OF DIFFERENT MATERIALS OR MADE UP OF DIFFERENT COMPONENTS, AND GOODS PUT UP IN SETS FOR RETAIL SALE, WHICH CANNOT BE CLASSIFIED BY REFERENCE TO 3(a), SHALL BE CLASSIFIED AS IF THEY CONSISTED OF THE MATERIAL OR COMPONENT WHICH GIVES THEM THEIR ESSENTIAL CHARACTER, INSOFAR AS THIS CRITERION IS APPLICABLE.

(c) WHEN GOODS CANNOT BE CLASSIFIED BY REFERENCE TO 3(a) OR 3(b), THEY SHALL BE CLASSIFIED UNDER THE HEADING WHICH OCCURS LAST IN NUMERICAL ORDER AMONG THOSE WHICH EQUALLY MERIT CONSIDERATION.

GRI 3 provides for the classification of goods that are prima facie (or when initially considered) classifiable under two or more headings. In such instances, the goods are classified pursuant to this rule based on three criteria, taken in order:

GRI 3 (a)

The first sentence to GRI 3 (a) provides that goods should be classified in the heading that provides the most specific description. In general, under this criterion, (1) a description by name is more specific than a description by class and (2) a description that more clearly identifies a product is more specific than one which is less complete.

GRI 3 (a) EXAMPLES:

EXAMPLE 1: An example of a description by name in one heading that is more specific than a description by class in another heading is as follow: "shavers and hair clippers with self-contained electric motor" of heading 8510 is more specific than "electro-mechanical tools for working in the hand with self-contained electric motor" of heading 8508 or "electro-mechanical domestic appliances with self-contained electric motor" of heading 8509.

EXAMPLE 2: An example of a description in one heading that more clearly identifies a product than a description in another heading (and thus the first description is more specific than the second description) is as follows: A product identified as "unframed safety glass made of toughened or laminated glass that is shaped and identifiable for use in airplanes" is more clearly described by the article

description "safety glass" of heading 7007 than by the article description "parts of goods of heading 8801 or 8802" (parts of aircraft and spacecraft) of heading 8803.

The second sentence to GRI 3 (a) further provides that when two or more headings each refer to only one of the materials or substances in mixed or composite goods, or to only some of the articles included in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. If this situation exists, then resort must be made to GRI 3 (b). (See examples discussed below for GRI 3 (b).)

GRI 3 (b)

GRI 3 (b) deals with mixed goods, composite goods, and goods put up in sets for retail sale as described above in the second sentence to GRI 3 (a) (i.e., each of the goods is potentially classifiable in more than one heading because each good consists of two or more different ingredients, materials, components or articles and no heading provides for the goods as a whole). By application of this criterion, such goods are classified according to the ingredient, material, component or article that gives the mixtures, composite goods, or sets their "essential character."

Goods Put up in Sets for Retail Sale. For the purposes of GRI 3 (b), the term "goods put up in sets for retail sale" means that the goods under consideration must (a) consist of at least two different articles (i.e., the articles must be of a different type or nature, e.g., two table spoons are not such a "set") which are, prima facie, classifiable in different headings; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking.

GRI 3 (b) EXAMPLES:

MIXTURE EXAMPLE: An example of a "mixture" coming within the purview of GRI 3 (b) would be a mixture of barley of heading 1003 and oats of heading 1004 in equal amounts. In such an instance, there is a product consisting of two or more ingredients with each ingredient having a provision in which it could potentially be classified and no provision exists in the Harmonized System that provides for the mixture as a whole.

COMPOSITE GOOD EXAMPLE: An example of a "composite good" coming within the purview of GRI 3 (b) would be a combined flashlight of heading 8513 and radio of heading 8527 (i.e., both are contained in the same housing). In such an instance, there is a product consisting of two or more different units or components that are located in the same housing with each component having a provision in which it could potentially be classified and no provision exists in the Harmonized System that provides for the composite good as a whole.

SET EXAMPLE: An example of a "set" coming within the purview of GRI 3 (b) would be a hairdressing kit consisting of a pair of elec-

tric hair clippers of heading 8510, a comb of heading 9615, a pair of scissors of heading 8213, and a brush of heading 9603. In such an instance, there is a product that consists of more than one item or article with each article having a provision in which it could potentially be classified and no provision exists in the Harmonized System that provides for the set as a whole. In the above-mentioned hairdressing kit, the articles are put up together to meet the particular need or carry out the specific activity of grooming hair.

In each of the above-mentioned three examples, one would need to make a determination as to the ingredient, material, component or article that imparts the essential character to the particular good. The good would then be classified as if made or consisting entirely of that ingredient, material, component or article. In some situations, however, no ingredient, material, component or article will be found to impart the essential character to a particular good. In such instances, resort would need to be made to GRI 3 (c) in order to classify the good.

GRI 3 (c)

GRI 3 (c) states that goods should be classified under the heading that occurs last in numerical order from among those that equally merit consideration if the goods cannot be classified by reference to GRIs 3 (a) or 3 (b).

GRI 3 (c) EXAMPLE:

In the above-mentioned example of the mixed good consisting of barley and oats in equal amounts, if neither the barley nor the oats is found to impart the essential character to the product, then by application of GRI 3 (c) the product would be classified in heading 1004 as if consisting solely of the oats. This is because the heading number for the oats found in the mixture occurs last in numerical order as between it and the barley (i.e., 1003 for the barley and 1004 for the oats).

WHAT IS THE ESSENTIAL CHARACTER OF A PRODUCT?

The term "essential character," as used in the GRIs, is not defined in the Harmonized System. As concerns that term, however, it is stated in the Explanatory Notes to the Harmonized System (which is an extrinsic interpretative aid to the Harmonized System that is discussed below) that the factor that determines the essential character of a good will vary as between different kinds of goods (i.e., essential character must be determined on a case-by-case basis). The essential character of a good, may, for example, be determined by the nature of the material or component, its bulk, quality, weight or value, or by the role of a constituent material in relation to the use of the goods. Other factors may be considered in determining the essential character of a product.

General Rule of Interpretation No. 4

RULE 4. GOODS WHICH CANNOT BE CLASSIFIED IN ACCORDANCE WITH THE ABOVE RULES SHALL BE CLASSIFIED UNDER THE HEADING APPROPRIATE TO THE GOODS TO WHICH THEY ARE MOST AKIN.

If goods cannot be classified according to GRIs 1 to 3, then resort must be made to GRI 4. GRI 4 requires that goods are to "be classified under the heading appropriate to the goods to which they are most akin." This rule should be applied very infrequently as GRIs 1 to 3 will cover the classification of almost all goods. When attempting to apply this rule, however, any determination regarding "kinship" should depend on such factors as description, character, purpose or intended use, designation, production process and the nature of the goods.

General Rule of Interpretation No. 5

RULE 5. IN ADDITION TO THE FOREGOING PROVISIONS, THE FOLLOWING RULES SHALL APPLY IN RESPECT OF THE GOODS REFERRED TO THEREIN:

(a) CAMERA CASES, MUSICAL INSTRUMENT CASES, GUN CASES, DRAWING INSTRUMENT CASES, NECKLACE CASES AND SIMILAR CONTAINERS, SPECIALLY SHAPED OR FITTED TO CONTAIN A SPECIFIC ARTICLE OR SET OF ARTICLES, SUITABLE FOR LONG-TERM USE AND ENTERED WITH THE ARTICLES FOR WHICH THEY ARE INTENDED, SHALL BE CLASSIFIED WITH SUCH ARTICLES WHEN OF A KIND NORMALLY SOLD THEREWITH. THIS RULE DOES NOT, HOWEVER, APPLY TO CONTAINERS WHICH GIVE THE WHOLE ITS ESSENTIAL CHARACTER;

(b) SUBJECT TO THE PROVISIONS OF RULE 5(a) ABOVE, PACKING MATERIALS AND PACKING CONTAINERS ENTERED WITH THE GOODS THEREIN SHALL BE CLASSIFIED WITH THE GOODS IF THEY ARE OF A KIND NORMALLY USED FOR PACKING SUCH GOODS. HOWEVER, THIS PROVISION IS NOT BINDING WHEN SUCH PACKING MATERIALS OR PACKING CONTAINERS ARE CLEARLY SUITABLE FOR REPETITIVE USE.

GRI 5 has two sections: GRI 5 (a) and GRI 5 (b). These two sections deal with various types of containers presented with the articles for which they are intended.

GRI 5 (a)

GRI 5 (a) deals with the treatment of long-term use cases, boxes, and similar containers presented with the articles for which they are intended. Under this rule, long-term use containers imported with articles for which they are intended to be used are to be classified with the articles if they are of a kind of container normally sold with such articles (e.g., camera cases with cameras and musical instrument cases with musical instruments). This rule, however, does not apply to containers that give the imported article its essential character (e.g., a silver tray or dish containing tea or a high-quality ornamental ceramic bowl containing candies or sweets). Such merchandise is to be classified under the heading for the container.

GRI 5 (b)

GRI 5 (b) states that packaging containers and materials not normally intended to be reused are classified with the articles in which they are presented or imported (e.g., cardboard boxes or containers containing food products). This rule, however, does not apply to packaging materials or packing containers clearly suitable for repetitive use (e.g., certain metal drums or containers of iron or steel for compressed or liquefied gas). Such containers are to be classified separately from the materials that they hold.

General Rule of Interpretation No. 6

RULE 6. FOR LEGAL PURPOSES, THE CLASSIFICATION OF GOODS IN THE SUBHEADINGS OF A HEADING SHALL BE DETERMINED ACCORDING TO THE TERMS OF THOSE SUBHEADINGS AND ANY RELATED SUBHEADING NOTES AND, MUTATIS MUTANDIS, TO THE ABOVE RULES, ON THE UNDERSTANDING THAT ONLY SUBHEADINGS AT THE SAME LEVEL ARE COMPARABLE. FOR THE PURPOSES OF THIS RULE, THE RELATIVE SECTION, CHAPTER AND SUBCHAPTER NOTES ALSO APPLY, UNLESS THE CONTEXT OTHERWISE REQUIRES.

GRI 6 is the last of the GRIs. It prescribes that, for legal purposes, GRIs 1 to 5 govern, mutatis mutandis (or with the necessary changes), classification at subheading levels within the same heading. Or, in other words, GRIs 1 to 5 are to be reapplied to determine the classification of goods at the subheading level. Goods are to be classified at equal subheading levels (that is, at the same digit level) within the same heading under the subheading that most specifically describes or identifies them (or as otherwise required or directed under GRIs 1 to 5). Only subheadings at the same level within the same heading are comparable (i.e., no consideration should be given to the terms of any subheading within another subheading when considering the proper classification of merchandise at the higher level subheading).

GRI 6 EXAMPLES:

EXAMPLE 1: A framed glass mirror is found to be classified in heading 7009. Thereafter, it would have to be classified within the subheading structure of that heading by application of GRIs 1 to 5 pursuant to GRI 6:

70.09	–	*GLASS MIRRORS, WHETHER OR NOT FRAMED, INCLUDING REAR-VIEW MIRRORS.*
7009.10	–	*Rear-view mirrors for vehicles*
	–	*Other:*
7009.91	—	*Unframed*
7009.92	—	*Framed*

Initially, a determination would need to be made as to whether the framed glass mirror is classified at the 5-digit (or "one-dash") sub-

heading level in 5-digit subheading 7009.1 ("rear-view mirrors for vehicles") or in 5-digit subheading 7009.9 ("other"). If the product is found to be classified in 5-digit subheading 7009.1 (as a rear-view mirror for a vehicle), then the classification analysis would end there and the product would be classified in subheading 7009.10 (as 5-digit subheading 7009.1 is not further subdivided). In the instant case, the framed glass mirror does not satisfy the article description for 5-digit subheading 7009.1. Therefore, the product would be classified at the 5-digit subheading level in 5-digit subheading 7009.9 (as a glass mirror other than a rear-view mirror for a vehicle). Next, a determination would have to be made as to whether the product is classified at the 6-digit (or "two-dash") subheading level within 5-digit subheading 7009.9 in 6-digit subheading 7009.91 (as an *unframed* glass mirror other than a rear-view mirror for a vehicle) or in 6-digit subheading 7009.92 (as a *framed* glass mirror other than a rear-view mirror for a vehicle). The framed glass mirror would be classified in subheading 7009.92 by application of GRI 1 pursuant to GRI 6.

EXAMPLE 2: A set consisting of a shovel, fork, and pick for use in gardening would be classified in heading 8201 as each article is specifically provided for in the terms to that heading. Within heading 8201, shovels are provided for in subheading 8201.10, forks in subheading 8201.20, and picks in subheading 8201.30. Consequently, one would need to resort to GRI 3 pursuant to GRI 6 in order to classify the set at the subheading level within heading 8201. That is, one would need to determine which of the three articles imparts the essential character to the set pursuant to GRI 3 (b). If no one article is found to impart the essential character to the set, then one would classify the set under subheading 8201.30 because the subheading number for that article occurs last in numerical order as provided for in GRI 3 (c).

As evident from the above discussion, the GRIs provide that goods must first be classified by heading level, and only after the appropriate heading has been determined, then by equal subheading levels (first by five-digit and then by six-digit international levels) within that heading. When considering the appropriate classification at a particular subheading level, no consideration should be given to any of the terms of any lower-level subheading (as the analysis at each subheading level should be conducted without consideration of the terms of any lower-level subheading provision). This step-by-step analysis applies without exception throughout the Harmonized System (and throughout any national subheading levels as found in a particular country's Harmonized System-based tariff system).

EXTRINSIC INTERPRETATIVE AIDS

In interpreting the Harmonized System, one may at times need to resort to extrinsic interpretative aids. Chief among them are (1) the Explanatory Notes to the Harmonized System and (2) the Harmonized System Compendium of Classification Opinions.

(1) *Explanatory Notes*

The Explanatory Notes represent the official interpretation of the Customs Cooperation Council (hereafter referred to as the "World Customs Organization") on the scope of each heading of the Harmonized System. As such, they are intended to be applicable at the 4-digit (heading) numerical code level, and sometimes at the 6-digit (subheading) numerical code level. At times, however, the Explanatory Notes may provide guidance at the national numerical code level (i.e., beyond the 6-digit numerical code level) in a contracting party's tariff system.

Although they are neither legally binding on the contracting parties to the Harmonized System Convention nor considered to be dispositive in the interpretation of the Harmonized System, the generally accepted view is that the Explanatory Notes should be consulted for guidance and considered as persuasive authority in interpreting the Harmonized System (although some countries may treat the Explanatory Notes as having the same legal authority as the legal text of the Harmonized System). The Explanatory Notes are periodically amended by the Harmonized System Committee (which is a committee of the World Customs Organization that is charged with interpreting and maintaining the Harmonized System—see discussion below). All such amendments to the Explanatory Notes are periodically published by the World Customs Organization as amending supplements to that document.

The Explanatory Notes are published both in English and in French (which are the two official languages of the World Customs Organization). The most recent edition of the Explanatory Notes is the second edition. It was published in 1996.

(2) *Compendium of Classification Opinions*

The Harmonized System Compendium of Classification Opinions is a collection of decisions issued by the Harmonized System Committee. The decisions usually result from classification problems raised by or disputes between customs administrations.

All classification decisions issued as classification opinions by the Harmonized System Committee are periodically published by the World Customs Organization as amending supplements to the Compendium of Classification Opinions. The Compendium of Classification Opinions is published both in English and in French.

Availability of the Explanatory Notes & the Compendium

The Explanatory Notes and the Compendium of Classification Opinions are available for sale by the World Customs Organization, Rue de l'Industrie, 26–38, B 1040, Brussels, Belgium. WCO Telephone number: 322–508–4211. WCO Facsimile number: 322–508–4240. WCO world wide web site: URL (Internet) address: http://www.wcoomd.org.

AMENDMENT AND MAINTENANCE PROCEDURES AND DISPUTE SETTLEMENT

For an international tariff system to remain viable and current, mechanisms must exist for amending and maintaining it and for set-

tling disputes arising from its use. The Harmonized System Convention provides for the amendment and maintenance of the Harmonized System and for the settlement of classification disputes between contracting parties to that convention.

AMENDMENT AND MAINTENANCE PROCEDURES

Harmonized System Committee

As noted above, there exists a committee of the World Customs Organization that is known as the Harmonized System Committee ("HSC"). Article 6 of the Harmonized System Convention establishes the HSC. The HSC is composed of representatives of the contracting parties to the Harmonized System Convention and members of the World Customs Organization who are not contracting parties to the Harmonized System Convention. It may also be composed of representatives of states which are not members of the World Customs Organization, representatives of any relevant intergovernmental or other international organizations, and any experts whose participation is considered desirable. The HSC meets twice a year at the World Customs Organization's headquarters in Brussels, Belgium. Questions submitted for consideration by the HSC are decided by vote after discussion and debate. Only contracting parties to the Harmonized System Convention have the right to vote.

The HSC's responsibilities include issuing classification decisions under the Harmonized System. Classification questions presented for consideration by the HSC are usually the result of classification problems raised by or disputes between customs administrations. Classification decisions require a simple majority vote. They may take one or more of the following forms: (1) mention of the decision in the report of the session of the HSC (which occurs with every classification decision); (2) issuance of a classification opinion for inclusion in the Compendium of Classification Opinions; or (3) an amendment to the Explanatory Notes.

The HSC also considers amendments to the legal text of the Harmonized System. Such amendments require a two-thirds majority vote. All proposed amendments to the Harmonized System, however, must first be adopted and recommended to the contracting parties to the Harmonized System Convention by the Council (which is the executive or governing body of the World Customs Organization and is composed of representatives of the members of the World Customs Organization) before the amendments can go into effect. It should be noted, however, that a contracting party may stop the entering into force of an amendment recommended by the Council. This is done by the contracting party entering a reservation against the amendment with the Secretary General of the World Customs Organization within six months of the date on which the Secretary General has notified the contracting parties of the amendment.

Each session of the HSC is preceded by a meeting of a "working party." That party examines the language of proposed amendments and

classification opinions that were approved in principle by the previous session of the HSC. The language of all amendments and opinions examined by a working party are sent to the HSC for review and final approval.

The United States actively participates in the sessions of the HSC. In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418) (19 U.S.C. § 3010), the Department of the Treasury, represented by the U.S. Customs Service, the Department of Commerce, represented by the Census Bureau, and the U.S. International Trade Commission, jointly represent the U.S. government at the sessions of the HSC. *See also* 53 Fed. Reg. 45646 (November 10, 1988). The U.S. Customs Service representative serves as the head of the U.S. delegation to the HSC.

Harmonized System Review Subcommittee

In order to ensure that the Harmonized System continues to remain current, the Harmonized System Review Subcommittee ("RSC") was created as a subcommittee of the HSC. The RSC is responsible for periodically reviewing the Harmonized System and proposing amendments to the legal text that reflect changes in technology and in patterns of international trade. The RSC is composed of the same representatives as the HSC (see above discussion). As with the HSC, the RSC meets twice a year at the World Customs Organization's headquarters in Brussels, Belgium.

The RSC works by consensus. If no consensus can be reached on a particular matter, then the differing views with their supporting rationales are reported to the HSC. All amendments proposed by the RSC must be referred to the HSC for approval. Those amendments approved by the HSC, as indicated above, must still be adopted and recommended to the contracting parties to the Harmonized System Convention by the Council before they can go into effect.

The RSC completed its first general, sector-by-sector review of the Harmonized System in 1993. That review resulted in approximately 700 legal amendments to the text of the Harmonized System. After being approved by the HSC, the amendments were adopted by the Council in July 1993 ("Article 16 Recommendation of 6 July 1993"). Under article 16 to the Harmonized System Convention, the amendments became effective on January 1, 1996, with the exception of those amendments against which a timely reservation was entered by a contracting party.

The United States actively participates in the sessions of the RSC. In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418)(19 U.S.C. § 3010), the Department of the Treasury, represented by the U.S. Customs Service, the Department of Commerce, represented by the Census Bureau, and the U.S. International Trade Commission, jointly represent the U.S. government at the sessions of the RSC. *See also* 53 Fed. Reg. 45646 (No-

vember 10, 1988). The U.S. International Trade Commission representative serves as the head of the U.S. delegation to the RSC.

Scientific Subcommittee

The HSC is often assisted in its technical work by the Scientific Subcommittee ("SSC"). The SSC is an advisory body of the World Customs Organization for questions involving chemical or other technical or scientific matters. It is principally composed of laboratory personnel from member administrations. The SSC assists the HSC by providing technical advice on questions the HSC has referred to it. The SSC usually meets once a year at the World Customs Organization's headquarters in Brussels, Belgium. The United States actively participates in the sessions of the SSC. The U.S. Department of the Treasury, represented by the U.S. Customs Service, represents the U.S. government at the sessions of the SSC.

Secretariat and Nomenclature & Classification Directorate

The World Customs Organization has a staff known as the "Secretariat." It consists of permanent personnel and experts recruited from member administrations (who are appointed for set terms). Nomenclature and classification matters are handled within the Secretariat by the "Nomenclature and Classification Directorate." Its duties include organizing the meetings of the HSC, RSC and SSC (which includes preparing the working documents and reports for the meetings) and providing informal advice to customs administrations on the Harmonized System classification of merchandise.

DISPUTE SETTLEMENT

Article 10 of the Harmonized System Convention sets forth the procedures for the settlement of classification disputes between contracting parties. Under article 10, parties are initially required to attempt to settle the matter between themselves. When attempting to so settle such a dispute, the parties may seek the informal views of the World Customs Organization's Secretariat.

If the parties cannot resolve the dispute through bilateral discussions, then the matter may be submitted for a decision by the HSC. Unless the parties involved agree otherwise, a classification decision by the HSC is not legally binding on the parties.

Disputes may also be referred by the HSC to the Council which will make recommendations in conformity with item (e) to article III to the Convention establishing the Customs Cooperation Council.

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

The United States, in implementing its obligations under the Harmonized System Convention, adopted and incorporated into its national customs tariff system the "core" Harmonized System. As indicated above, the U.S. customs tariff system is known as the Harmonized Tariff Schedule of the United States ("HTSUS"). The HTSUS went into effect on January 1, 1989, pursuant to section 1204 of the Omnibus Trade and

Competitiveness Act of 1988 (Public Law 100–418, August 23, 1988) (19 U.S.C. § 3004) and Presidential Proclamation 5911 (November 19, 1988) (53 Fed. Reg. 47413, November 22, 1988). It replaced the Tariff Schedules of the United States (which had been in effect since August 31, 1963). Merchandise imported into the United States is classified under the HTSUS.

HTSUS Structure

In adopting and incorporating the Harmonized System, the legal text of the HTSUS consists of (1) the General Notes (which contain information relating to matters such as the territory covered by the schedule, terminology used in the schedule, special tariff programs, and the like); (2) the General Rules of Interpretation; (3) the Additional U.S. Rules of Interpretation (see discussion below); (4) all product categories set forth in 22 sections and 99 chapters that are designated by 4-digit, 6-digit, and 8-digit code numbers together with tariff rates and other treatment and Harmonized System section and chapter notes and Additional U.S. Notes (which are legal notes that provide definitions or information on the scope of the pertinent provisions or set additional requirements for classification purposes); and (5) appendixes for certain chemicals, pharmaceuticals, and intermediate chemicals for dyes. The above-mentioned items are considered to be statutory provisions of law for all purposes. *See* Sections 1204(a) and 1204(c) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 3004).

In addition to the above-mentioned items, also included in the HTSUS, but not part of the legal text (and thus having no legal force or effect), are the statistical annotations, notes, annexes, suffixes, units of quantity, and other material formulated under section 484(f) of the Tariff Act of 1930 (19 U.S.C. § 1484 (f)) as well as the table of contents, footnotes, index, and other matters inserted for ease of reference.

As discussed above, chapters 98 and 99 were reserved in the Harmonized System, at the international level, for national use by individual countries in the coding of provisions other than according to the terms of the Harmonized System legal text (or nomenclature). Section XXII of the HTSUS consists of those two chapters. Chapter 98 contains special classification provisions permitting, in special circumstances, the duty free entry or partial duty free entry of goods that would otherwise be subject to duty. On the other hand, chapter 99 contains provisions that reflect legislation and executive and administrative actions pursuant to duly constituted authority under which (1) one or more of the provisions of chapters 1 through 98 are temporarily amended or modified or (2) additional duties or other import restrictions as imposed by, or pursuant to, collateral legislation.

HARMONIZED TARIFF SCHEDULE of the United States (1997)

Annotated for Statistical Reporting Purposes

X
49-3

Heading/ Subheading	Stat. Suffix	Article Description	Unites of Quantity	Rates of Duty 1 General	Special	2
4903.00.00	00	Children's picture, drawing or coloring books	No.	Free		Free
4904.00.00		Music, printed or in manuscript, whether or not bound or illustrated		Free		Free
	20	Sheet music, whether or not stapled or folded, but not otherwise bound	kg.			
	40	Other	No.			
4905		Maps and hydrographic or similar charts of all kinds, including atlases, wall maps, topographical plans and globes, printed:				35%
	00	Globe	kg.	3.7%	Free (A,CA, E,IL,J,MX)	
		Other:				
4905.91.00	00	In book form	No.	Free		Free
4905.99.00	00	Other	kg.	Free		Free
4906.00.00	00	Plans and drawings for architectural, engineering, industrial, commerical, topographical or similar purposes, being originals drawn by hand; handwritten tests; photographic reporductions on sensitized paper and carbon copies of the foregoing	kg.	Free		25%
4907.00.00	00	Unused postage, revenue or similar stamps of current or new issue in the country to which they are destined; stamp-impressed paper; banknotes; check forms; stock, share or bond certificates and similar documents of title	kg.	Free		65¢/kg

Harmonized Tariff Schedule

As shown above, the tariff and tariff-related provisions (e.g., numerical codes and articles descriptions) of the HTSUS are presented in the body of the schedule in a tabular format containing several columns. In those columns are contained the headings, subheadings, statistical annotations, article descriptions, units of quantity and rates of duty. The first column is entitled "Headings/Subheadings." This column contains the 4-digit, 6-digit and 8-digit numbers assigned to the class of goods described in the third column (i.e., article descriptions). The 4-digit number is defined as a "heading," and the 6-digit and 8-digit numbers are defined as "subheadings." As indicated above, the 4-digit and 6-digit numbers are part of international Harmonized System whereas the 8-digit number is part of the national HTSUS. The legal text of the HTSUS extends only up to the 8-digit level. Tariff-rate lines are found only at the 8-digit level or line.

The second column is entitled "Stat. Suffix" for "Statistical Suffix." Some tariff-rate lines are annotated to permit the collection of trade data on narrower classes of merchandise. This is done by the addition of two or more digits to the 8-digit legal numerical code. The result is a 10-digit "statistical-reporting number." If no two-digit annotations exist for a tariff-rate line, then two additional zeroes are added onto the 8-digit legal numerical code. All merchandise falling within the 10-digit statistical-reporting numbers of a particular 8-digit legal provision receives the same rate of duty as provided for in that 8-digit provision. The 10-digit statistical-reporting numbers are for the collection of statistical data only and are not part of the legal text of the HTSUS (and thus cannot be cited as authority for the classification of merchandise).

The third column is entitled "Article Description." Within this column are detailed descriptions of goods falling under each heading, subheading, and statistical-reporting number. As indicated below, goods are classified under a particular heading or subheading by application of the GRIs, and in some instances, by application of the Additional U.S. Rules of Interpretation.

The fourth column is entitled "Units of Quantity." Under this column is the unit of measure in which goods are to be reported for statistical purposes. These units are administratively determined under section 484(f) of the Tariff Act of 1930 (19 U.S.C. § 1484(f)). These same units may also be used to assess rates of duty for particular goods. Also, in some instances, two or three different figures in different units must be reported. The second unit of quantity in such instances is frequently used to administer a measure regulating imports (e.g., quotas). If the letter "X" appears in this column, only the value of the shipment must be reported.

The final three columns appear together under a superior heading entitled "Rates of Duty." The rates of duty in that column apply to goods imported into the customs territory of the United States (which is stated in HTSUS General Note 2 to include "only the States, the District of Columbia and Puerto Rico"). The column designated number 1 is divided into two subcolumns: general and special. Under the general subcolumn are rates of duty for countries qualifying for most-favored-nation ("MFN") status. Most goods imported into the United States receive the general rate of duty.

Under the special subcolumn are found the rates of duty for certain preferential tariff programs (which are designated by alphabetic symbols and discussed in HTSUS General Note 3). The preferential rates afforded under these programs are generally designed to encourage economic stability and development in certain developing countries (e.g., Caribbean Basin Initiative); to promote trade in a particular industry (e.g., the automotive industry through the United States-Canada Automobile Agreement); or to permit market integration through free trade areas (e.g., North American Free Trade Agreement).

The rates of duty in column 2 apply to products, whether imported directly or indirectly, of certain countries and areas designated in HTSUS General Note 3. The countries and areas listed in General Note 3 are ones to whose goods the United States has decided not to extend MFN status. The rates of duty under column 2 are generally substantially higher than the general or MFN rates of duty under column 1.

INTERPRETATION OF THE HTSUS

The tariff classification of merchandise under the HTSUS is governed by the principles set forth in the GRIs (and applied as discussed above) and, in the absence of special language or context which requires otherwise, then by the "Additional U.S. Rules of Interpretation":

ADDITIONAL U.S. RULES OF INTERPRETATION

1. In the absence of special language or context which otherwise requires:

(a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;

(b) a tariff classification controlled by the actual use to which the imported goods are put in the United States is satisfied only if such use is intended at the time of importation, the goods are so used and proof thereof is furnished within 3 years after the date the goods are entered;[6]

(c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such part or accessory; and

(d) the principles of section XI regarding mixtures of two or more textile materials shall apply to the classification of goods in any provision in which a textile material is named.

As indicated previously, the GRIs and the Additional U.S. Rules of Interpretation are part of the legal text of the HTSUS and are considered to be statutory provisions of law for all purposes. *See* Sections 1204(a) and 1204(c) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 3004).

RATES OF DUTY

All goods imported into the United States are subject to duty or duty free entry in accordance with their classification in the HTSUS. There are three types of rates of duty that may be assessed on goods imported into the United States: ad valorem, specific, or compound (or mixed). An ad valorem rate of duty is a percentage of the dutiable or customs value of the merchandise. (This is the rate of duty most often applied in the HTSUS.) A specific rate of duty is a specified amount per unit of weight or other measure of quantity (e.g., 10 cents per pound or 5 cents per dozen). Finally, a compound (or mixed) rate of duty is a combination of both an ad valorem rate of duty and a specific rate of duty (e.g., 5 percent ad valorem plus 10 cents per pound).

MAINTENANCE OF THE HTSUS

In order to remain viable and current, legal procedures exist for modifying the HTSUS under the Omnibus Trade and Competitiveness Act of 1988 ("OTCA"). Under the OTCA, the President is authorized to proclaim modifications to the HTSUS as are necessary or appropriate (which includes modifications made on the recommendation of the U.S.

[6] For the general conditions that must be satisfied when the tariff classification of a product is controlled by the "actual use" of the product, *see* 19 CFR §§ 10.131 to 10.139.

International Trade Commission as indicated below). *See* sections 1204(b) and 1206(a) of the OTCA (19 U.S.C. §§ 3004, 3006). These modifications are considered to be statutory law for all purposes. *See* section 1204(c) of the OTCA (19 U.S.C. § 3004). As part of the modification process, the U.S. International Trade Commission ("ITC") is charged with the responsibility of keeping the HTSUS under continuous review and periodically recommending to the President amendments that have been recommended by the World Customs Organization (see above discussion on amending the Harmonized System) or modifications that the ITC believes are necessary or appropriate. *See* section 1205 of the OTCA (19 U.S.C. § 3005). Additionally, the ITC is charged with the responsibility of compiling and publishing, at appropriate intervals, and keeping up to date, the HTSUS and related materials. *See* section 1207 of the OTCA (19 U.S.C. § 3007). Pursuant to this responsibility, the ITC periodically issues new editions of the HTSUS (as well as supplements as are necessary).

Availability of the HTSUS as a Looseleaf Publication

Copies of the HTSUS are available for sale as a looseleaf publication by the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954. GPO Telephone number: 202–512–1800. GPO Facsimile number: 202–512–2250. GPO URL (Internet) address: http://www.access.gpo.gov/su_docs/.

Availability of the HTSUS on the Internet

For convenience, the HTSUS is available on the U.S. Customs Service's world wide web site: URL (Internet) address: http://www.customs.ustreas.gov. Words and numbers can be searched in the HTSUS on this web site. In addition to the HTSUS, other items of interest to exporters and to importers may be found on this web site.

The HTSUS is also available on the ITC's world wide web site: URL (Internet) address: http://www.usitc.gov.

Issuance of Classification Rulings by the U.S. Customs Service on Prospective Importations

As explained in the introduction, it is now the responsibility of the importer of record to **classify and value** the goods using "reasonable care." In order to meet the reasonable care requirement, a person may use the services of an expert or seek a ruling from U.S. Customs.

Under Part 177 of title 19 of the Code of Federal Regulations (19 CFR Part 177), interested persons may obtain a binding tariff classification ruling on prospective importations into the United States under chapters 1 through 97 of the HTSUS by submitting a written request to the Director, National Commodity Specialist Division, U.S. Customs Service, Attn: Classification Ruling Requests, 6 World Trade Center, New York, NY 10048. The ruling will be binding at all ports of entry unless modified or revoked by the U.S. Customs Service's Commercial Rulings Division of the Office of Regulations and Rulings, pursuant to 19 U.S.C. §1625.

Any person intending to export merchandise to the United States or to import merchandise into the United States may seek a pre-importation ruling from the U.S. Customs Service in order to avoid classification problems or difficulties concerning their merchandise.

The following information must be submitted as part of a pre-importation ruling request:

- The names, addresses and other identifying information of all interested parties (if known) and the manufacturer identification code (if known).
- The name(s) of the port(s) in which the merchandise will be entered (if known).
- A description of the transaction, for example, a prospective importation of (merchandise) from (country).
- A statement that there are, to the best of the exporter's or importer's knowledge, no issues concerning the commodity for which a ruling is sought pending before the U.S. Customs Service (including by any U.S. Customs Service field office or at any port of entry) or before any court (including the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit).
- A statement indicating whether classification advice has been previously sought from the U.S. Customs Service concerning the commodity for which a ruling is sought, and if so, then from whom and what advice was rendered, if any.

Ruling requests must contain sufficient information to enable the U.S. Customs Service to determine the proper tariff classification of the merchandise. Accordingly, ruling requests should include the following information:

- A complete and detailed written description of the goods. Samples (if practical), list of ingredients and percentages thereof, sketches, diagrams, or other illustrative material should be submitted with the request if useful in supplementing the written description.
- Cost breakdowns of component materials or parts and their respective quantities shown in percentages of the goods, if possible.
- A description of the principal use of the goods, as a class or kind of merchandise, in the United States.
- Information as to the commercial, scientific, technical or common name or designation of the merchandise (or as otherwise may be applicable).
- Any other information or materials that may be pertinent or required for classifying the merchandise.

Individual ruling requests must be limited to a maximum of 5 merchandise items which all must be of the same class or kind (e.g., a request concerning textile articles may not include items such as footwear).

FOIA AND INFORMATION SUBMITTED FOR A RULING REQUEST

As a general rule, no part of a ruling is deemed to constitute privileged or confidential commercial or financial information or trade secrets unless confidentially was requested as provided for in 19 CFR § 177.2(b)(7) and granted as provided for in 19 CFR § 177.8(a)(3). Pursuant to 19 U.S.C. § 1625, rulings are published electronically (see below). Information submitted to the U.S. Customs Service as part of a ruling request may be disclosed or withheld in accordance with the provisions of the Freedom of Information Act, as amended. *See* 5 U.S.C. § 552 and 19 CFR § 177.8(a)(3).

ADMINISTRATIVE APPEAL RIGHTS AND PROCEDURE

A recipient of a pre-importation ruling from the National Commodity Specialist Division (or a Port) who disagrees with the classification decision contained in the ruling may seek an administrative review of the decision from the Director, Commercial Rulings Division, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229. A request for an administrative review of a classification decision contained in a pre-importation ruling must be in writing and must set forth the basis for disagreement with the decision and provide all information and materials necessary to conduct a proper and complete review.

AVAILABILITY OF CLASSIFICATION RULINGS ISSUED BY THE U.S. CUSTOMS SERVICE

Administrative classification rulings issued by the U.S. Customs Service are available (1) by subscription on diskettes from the U.S. Customs Service (Legal Reference Staff, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229. Telephone number: 202–927–2257. Facsimile number: 202–927–3318) and (2) free of charge from the U.S. Customs Service's world wide web site: URL (Internet) address: http://www.customs.ustreas.gov. The rulings are also available from various commercial sources.

LIST OF COUNTRIES, TERRITORIES OR CUSTOMS OR ECONOMIC UNIONS USING THE HARMONIZED SYSTEM

Situation as of 18 April 1997

(Total 152)

Algeria	+	Darussalam	x	Cuba	+	Germany	+
Antigua & Barbuda	x	Bulgaria	+	Croatia	+	Ghana	x
Argentina	+	Burkina Faso	+	Cyprus	+	Greece	+
Australia	+	Cameroon	+	Czech Republic	+	Grenada	x
Austria	+	Canada	+	Denmark	+	Guatemala	x
Bahrain	x	Central African Republic	x	Dominica	x	Guinea	x
Bangladesh	+	Chad	+	Ecuador	x	Guyana	x
Barbados	x	Chile	x	Egypt	x	Haiti	x
Belgium	+	China	+	El Salvador	x	Honduras	x
Belize	x	Colombia	x	Estonia	+	Hong Kong	x
Benin	x	Comoros	x	Ethiopia	+	Hungary	+
Bolivia	x	Congo	x	Fiji	x	Iceland	+
Botswana	+	Cook Islands	x	Finland	+	India	+
Brazil	+	Costa Rica	x	France	+	Indonesia	+
Brunei		Côte d'Ivoire	+	Gabon	x	Iran	+
Israel	+	Mozambique	x	Rwanda	+	Ireland	+
Italy	+	Myanmar	+	Saint Kitts and Nevis	x	Yugoslav Republic of Macedonia	+
Jamaica	x	Namibia	x	Saint Lucia	x	Togo	+
Japan	+	Netherlands	+	Saint Pierre and Miquelon (Fr. Terr.)	x	Tonga	x
Jordan	+	Nepal	x	Saint Vincent and the Grenadines	x	Trinidad and Tobago	x
Kenya	+	New Caledonia (Fr. Terr.)	x	Saudi Arabia	+	Tunisia	+
Kiribati	x	New Zealand	+	Senegal	+	Turkey	+
Korea (Rep.)	+	Nicaragua	x	Sierra Leone	x	Tuvalu	x
Kuwait	x	Niger	+	Singapore	x	Uganda	+
Latvia	+	Nigeria	+	Slovakia	+	Ukraine	x
Lebanon	+	Niue	x	Slovenia	+	United Arab Emirates	x
Lesotho	+	Norway	+	Solomon Islands	x	United Kingdom	+
Libyan Arab Jamahiriya	+	Pakistan	+	South Africa	+	United States	+
Liechtenstein	x	Panama	x	Spain	+	Uruguay	x
Lithuania	+	Papua New Guinea	x	Sri Lanka	+	Vanuatu	x
Luxembourg	+	Paraguay	x	Sudan	+	Venezuela	x
Macao	x	Peru	x	Swaziland	+	Viet Nam	x
Madagascar	+	Philippines	x	Sweden	+	Wallis and Futuna (Fr. Terr.)	x
Malawi	+	Poland	+	Switzerland	+	Zaire	+
Malaysia	+	Polynesia (French Terr.)	x	Tanzania	x	Zambia	+
Mali	+	Portugal	+	Thailand	+	Zimbabwe	+
Malta	+	Qatar	x	The Former EC	+		
Mauritius	+	Romania	+				
Mexico	+	Russia	+				
Mongolia	+						
Morocco	+						

Notes :

+ Acceptance (i.e., Contracting Party to the Harmonized System Convention).

x Indicates application only.

ADDITIONAL INFORMATION

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc which may be "downloaded" to your own PC. The Customs Service does not charge the pub-

lic to use the CEBB. You only pay telephone charges. The CEBB may be accessed by modem or through Customs Home Page on the World Wide Web. If you access it by modem, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 921–6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 921–6236.

The Internet

The Customs home page on the Internet's World Wide Web—which began public operation on August 1, 1996—will also provide the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The home page will post timely information including proposed and final regulations, rulings, news releases, Customs publications and notices, *etc.*, which may be searched, read online, printed or "downloaded" to your own PC. In addition, the CEBB (see above) may be accessed through our Home Page. The Customs Service does not charge the public for this service, although you will need Internet access to use it. The Internet address for Customs home page is **http://www.customs.ustreas.gov**.

Customs Regulations

The current edition of *Customs Regulations of the United States,* in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1997 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1996 through March, 1997 is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions ("Customs Bulletin")* is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade and Customs related decisions of the U.S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The Customs Bulletin is available for sale from the Superintendent of Documents.

Video Tapes

The U.S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in understanding the new ***Rules of Origin for Textiles and Apparel Products*** which became effective on July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for $20.00 (U.S. funds) directly from the Customs Service. If you require further information, or would like to purchase one or more tapes, please forward your written request to: U.S. Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

In order to assist the trade, Customs has prepared a video tape entitled "Customs Compliance: Why You Should Care." This 30 minute tape is divided into two parts. Part I, almost 18 minutes in length, is designed to provide senior executives and others in importing and exporting companies with an overview of some significant features of the Customs "Modernization Act" and some major reasons for adopting new strategies for minimizing legal exposure under this Act. Part II is intended primarily for compliance officers, legal departments and company officers involved in importing and exporting. This latter Part, approximately 12 minutes in length, explains why Customs and the trade can benefit from sharing responsibilities under Customs laws and it provides viewers with some legal detail relating to record keeping, potential penalties for non-compliance, and Customs Prior Disclosure program.

Part I features former Customs Commissioner George Weise, Assistant Commissioner for Regulations and Rulings Stuart Seidel, and Motorola's Vice President and Director of Corporate Compliance, Mr. Jack Bradshaw. Assistant Commissioner Seidel is the only speaker in Part II.

The tape is priced at $15.00 including postage. New orders, complete with payment in the form of a check or money order, should be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Operational Oversight Division, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

Informed Compliance Publications

The U.S. Customs Service has also prepared other Informed Compliance publications in the *What Every Member of the Trade Community Should Know About:* series, which are available from the Customs Electronic Bulletin Board and the Customs Home Page (see above). As of the date of this publication, the following booklets were available:

- *Fibers and Yarns*
- *Buying and Selling Commissions*
- *NAFTA for Textiles and Textile Articles*
- *Raw Cotton*

- *Customs Valuation*
- *Textile and Apparel Rules of Origin*
- *Mushrooms*
- *Marble*
- *Peanuts*
- *Caviar*
- *Bona Fide Sales amd Sales for Exportation*
- *Caviar*
- *Granite*
- *Internal Combustion Piston Engines*
- *Vehicles, Parts and Accessories*
- *Articles of Wax, Artificial Stone and Jewelry*
- *Tariff Classification*

Check the Customs Electronic Bulletin Board and the Customs Home Page for more recent publications.

Other Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000–152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs classification issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

What Every Member of the
Trade Community Should Know About:

CLASSIFICATION OF FESTIVE ARTICLES

as a result of the
Midwest Of Cannon Falls Court Case

An Advanced Level
Informed Compliance Publication of the
U.S. Customs Service

November 1997

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are ***"informed compliance"*** and ***"shared responsibility."*** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The Special Products Branch of the National Commodity Specialist Division, and the General Classification Branch of the Commercial Rulings Division, Office of Regulations and Rulings, and the Field National Import Specialist, Los Angeles have prepared this publication on **Classification of Festive Articles as a result of the *Midwest of Cannon Falls* Court Case**, as part of a series of informed compliance publications regarding the classification of imported merchandise. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

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CLASSIFICATION OF FESTIVE ARTICLES

as a result of the *Midwest Of Cannon Falls* Court Case

INTRODUCTION

The Court of Appeals for the Federal Circuit (CAFC) issued on August 14, 1997, its decision on the appeal and cross-appeal of the Court of International Trade's (CIT) decision in the case of *Midwest of Cannon Falls v. United States*. This CAFC decision, Court Nos. 96–1271, 96–1279, 1997 U.S. App. LEXIS 21617, amounted to a review of the entire case as decided by the CIT at the trial level. The CIT rejected the Customs position with respect to a wide range of goods that Customs had liquidated under headings other than 9505. Of the goods at issue, the bulk of them were held to be classified under heading 9505. Of the remainder, a few were determined to be non-festive, in accordance with Customs position, basically because of their utilitarian characteristics. Customs appealed on the items it lost and the importer appealed most of what they had lost. The CAFC affirmed the CIT with respect to the items the importer had won and reversed Customs on the few items held non-festive, making all the merchandise at issue festive under heading 9505.

The following document is being provided in response to our obligation to advise the public of the means by which Customs intends to implement the decision of the U.S. Court of Appeals for the Federal Circuit in the case of *Midwest of Cannon Falls v. United States*. Customs Headquarters and field offices have received numerous telephonic inquiries concerning the types of articles covered by the decision and the means by which Customs will undertake full implementation of the decision. The authority for the issuance of this document is contained in §625(e), Tariff Act of 1930 [19 U.S.C. 1625(e)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057). This section provides in part that the government may make available in writing or through electronic media, in an efficient, comprehensive and timely manner, all information, including directives, memoranda, electronic messages and telexes which contain instructions, requirements, methods or advice necessary for importers and exporters to comply with the Customs laws and regulations. This document notes that the authority for the change in the interpretation of the law rests with the Court. The government thereafter may see a need to inform importers of the change made by the Court. This document is intended to perform that function by providing the public general information, as well as indicating those instances when new individual rulings are advisable.

In order to ensure a careful implementation of the CAFC decision, this document provides guidance to the field and the trade, setting out the "old" standards for festive and the corresponding changes for each article of which we are aware. The first portion has been prepared by the National Commodity Specialist Division in consultation with the staff of the Commercial Rulings Division in Headquarters. The appen-

dix, which we also agree with, was provided by Mr. Prentiss Mitchell, Field National Import Specialist in Los Angeles, setting forth the same conclusions from another perspective and based upon the CIT's decision. It is hoped that the two approaches, when read together, will answer questions that will arise when importers ask (or assert) that their merchandise is governed by the decision in *Midwest*.

Headquarters has received a number of calls from importers asking how they should proceed with entering merchandise that they believe is substantially similar to merchandise classified in the *Midwest* decision. For those importers who hold Customs rulings that they believe are affected by the decision, they should be advised to present their ruling on entry, indicating to the port that the ruling has been revoked by operation of law as it relates to particular, identified articles. Import specialists should follow standard procedures, seeking advice through electronic 6431's, or any other appropriate means to arrive at the correct classification. If necessary, internal advice made be sought and when correct classification cannot be resolved at the port level, the importer should be advised to protest the entries. In the case of importers who do not hold a Customs ruling, they may be advised, as usual, to request a ruling under Part 177, Customs Regulations. Holders of preclassification rulings will need to examine their classification carefully to determine which classification they will want to rely on, but Customs takes the position that insofar as there are individual classifications in our rulings or preclassification decisions that are inconsistent with the *Midwest* decision, they have been revoked by operation of law. See Section 152.16 (e), Customs Regulations, 19 CFR 152.16(e). Customs will neither amend preclassification rulings nor issue regular binding rulings on its own initiative, but will respond to requests for new rulings that will be issued based on the change in the applicable law.

FOR FURTHER INFORMATION CONTACT: Ms. Alice Masterson, NIS 222, (212) 466–5892 (Christmas related); Ms. Alice J. Wong, NIS 225, (212) 466–5538 (festive, other than Christmas related).

BACKGROUND

Heading 9505 has been the subject of a lot of debate since the beginning of the HTS. By focusing on the language in the Explanatory Notes and applying the following criteria (called the three prong test), Customs established narrow classes or kinds of merchandise which would be classified in 9505 at the GRI 1 level.

THE ORIGINAL THREE PRONG TEST

Classification of the subject merchandise rests on its apparent satisfaction of the guidelines set for festive articles. In general, merchandise is classifiable in heading 9505, HTSUSA, as a festive article when the article, *as a whole:*

1. is of non-durable material or, generally, is not purchased because of its extreme worth, or intrinsic value (e.g., paper, cardboard, metal foil, glass fiber, plastic, wood);

2. functions primarily as a decoration (e.g., its primary function is not utilitarian); and

3. is traditionally associated or used with a particular festival (e.g., stockings and tree ornaments for Christmas, decorative eggs for Easter).

An article's satisfaction of these three criteria is indicative of classification as a festive article. The motif of an article is not dispositive of its classification and, consequently, does not transform an item into a festive article.

CHRISTMAS TREE ORNAMENTS

Remain classified in 9505.10.10–9505.10.25. To qualify as a Christmas tree ornament, in addition to satisfying the three prong test, the article must a) be advertised and sold as a Christmas tree ornament, b) have a loop or some method to attach to a tree, c) not be too heavy or big to be hung or attached to a tree.

Applying the above, a number of items and motifs were established as being GRI 1 items of 9505. Please note: prior to *Midwest of Cannon Falls*, only decorative items were considered to be classifiable in 9505. All functional or utilitarian items were excluded.

Prior to *Midwest Of Cannon Falls*

Prior to the *Midwest Of Cannon Falls* court case, the following purely decorative items and their appropriate accessories were classified within the festive heading 9505. They were considered to be traditional items (as per the Explanatory Notes) or similar to those items. The items themselves were classifiable as festive articles regardless of the motif. In other words, the motif of these items did not have to be traditional in color or theme.

For 9505.10:
Artificial Christmas trees
Tree Skirts
Tree ornaments
    certain pull toys
Advent Calendars
Christmas Pyramid
Certain Articles created from certain Artificial Foliage

Wreaths	(Evergreen branches, poinsettia,
Centerpieces	pine cone, pine needle leaves,
Candle rings	holly leaves, laurel leaves
Garlands	holly berries, mistletoe)
Mistletoe	

Dolls
    All representations of Santa
Statuettes and figurines
    All representations of Santa
Christmas Angels
Animated Display Figures
Porcelain Christmas Villages
Christmas Stockings

Christmas Stocking Holders
Nativity Sets

For 9505.90:
Easter Eggs (three dimensional, colored)
Jack-O-Lantern (three dimensional capable of illumination)
Animated Display Figures

Based upon the items above, it is clear Christmas, Easter and Halloween were the only recognized holidays for which we had determined specific festive articles and motifs.

The *Midwest Of Cannon Falls* case has modified the three prong test and thus expanded the number and types of items which will now be classifiable in 9505. However, there are still restrictions. Citing the specific language of the *Midwest* court case:

1. The items must be advertised and sold to consumers before the *particular* ***holiday*** *with which they are associated.*

2. The items must be used *in celebration of and for entertainment on a joyous* ***holiday****.*

POST *MIDWEST* THREE PRONG TEST

Classification of the subject merchandise rests on its apparent satisfaction of the guidelines set for festive articles. In general, merchandise is classifiable in heading 9505, HTSUSA, as a festive article when the article, *as a whole*:

1. is not predominately of precious or semiprecious stones, precious metal or metal clad with precious metal;

2. functions primarily as a decoration or functional item used in celebration of and for entertainment on a holiday and

3. is associated with or used on a particular holiday.

An article's satisfaction of these three criteria is indicative of classification as a festive article. The motif of an article is not dispositive of its classification and, consequently, does not transform an item into a festive article. It must be used in the same manner as merchandise which defines the class.

Christmas Tree Ornaments

Remain classified in 9505.10.10–9505.10.25. To qualify as a Christmas tree ornament, in addition to satisfying the three prong test, the article must a) be advertised and sold as a Christmas tree ornament, b) have a loop or some method to attach to a tree, c) not be too heavy or big to be hung or attached to a tree.

Other Christmas Items

If properly classified in 9505.10, but not a tree ornament, the item will be classified in 9505.10.40 or 9505.10.50 as appropriate.

CLASSIFICATION WITHIN HEADING 9505 AS A RESULT OF THE *MIDWEST OF CANNON FALLS* COURT CASE

I Additional Festive Occasions

The *Midwest Of Cannon Falls* decision recognized the following festive occasions (holidays):

Christmas
Valentine's Day
Easter
Halloween
Thanksgiving

II Additional Items

The Midwest case identified the following *additional items* to be classified in festive:

In 9505.10:
Dolls
    All representations of Mrs. Santa Claus
    Nutcrackers
Statuettes and figurines
    All representations of Mrs. Santa Claus
Wooden pull toys
Christmas Water Globes

In 9505.90:
Heart shaped metal wreath
Easter water globes
Jack-o'-lanterns (do not have to be capable of illumination)

III Expanded Interpretation of 9505 Motifs, Symbols or Representations

A. Decorative Items

For purely decorative items, [examples of purely decorative items are plaques, wall hangings, water globes, statuettes] the following patterns or motifs will cause classification as Festive (if allowed by the Chapter notes):

In 9505.10:
Santa Claus
Mrs. Santa
Decorated Christmas Tree
Nativity Scenes
Christmas Stockings
Rudolph the Red-Nose Reindeer

In 9505.90:
Jack–0'-lantern

B. Utilitarian Items

If the item is functional, the item MUST BE a *three dimensional full bodied representation of the above mentioned motifs (not just a silhouette).* (Some examples of utilitarian items are Kitch-

en and Tableware; cups, cookie jars, pitchers, teapots, serving bowls, and baskets)

This interpretation of *Midwest's* impact on functional items immediately excludes wearing apparel, towels, sheets, linens and similar furnishings. Watches, clocks and even Christmas Cards are also functional, and therefore must be three dimensional. Most will, therefore, be excluded from 9505. The origin of this position is the CAFC decision reversing the few classifications that the government prevailed on at the trial in the CIT. In each case where the CIT (and Customs) was reversed, the utilitarian article was three-dimensional, e.g., a jack-o'-lantern pitcher and mug. Therefore, in implementing the CAFC decision, Customs will go just as far as the CAFC went, but no further, in broadening the scope of the heading.

IV Additional Motifs, Symbols or Representations

A. Decorative Items

For purely decorative items, the following patterns or motifs *will raise the possibility* of classification as Festive (if allowed by the Chapter notes) by application of the factors discussed in *United States vs. The Carborundum Co.*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976)[1].

In 9505.10:
Angel
Reindeer
"Noel"
"Peace on Earth"
"Merry Christmas"
"Ho Ho Ho"
Words from well known Christmas Carols and Christmas songs.

In 9505.90:
Ghost
Skeleton
Black Cat
"Boo"
"Happy Halloween"
Witch
"Happy Thanksgiving"
Turkey
Pilgrim & Indians
Easter Bunny
Easter Egg
Heart

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[1] As stated in *United States v. The Carborundum Co.*, 63 CCPA 98, C.A.D. 1172, 536 F.2nd 373 (1976), certain factors must be looked at to determine whether imported merchandise is of a certain "class or kind." These factors include:

a) the physical characteristics of the merchandise,
b) the expectation of the ultimate purchases,
c) the channels of trade of the merchandise,
d) the environment of the sale (accompanying accessories, manner of advertisement and display)
e) used in the same manner as merchandise which defines the class,
f) the economic practicality of so using the import,
g) recognition in the trade of this use.

If the importer cannot provide catalogue or sales information and other information on Carborundum factors, Customs will deny claim as a festive article.

Easter Lily
"Happy Easter"
"Happy Valentines Day"

B. Utilitarian Items

If the item is functional, the item MUST BE a *three dimensional full bodied representation* of the above mentioned motifs (not just a silhouette) and meet the *Carborundum* tests. (Some examples of utilitarian items are Kitchen and Tableware; cups, cookie jars, pitchers, teapots, serving bowls, and baskets.) This interpretation of *Midwest's* impact on functional items immediately excludes wearing apparel, towels, sheets, linens and similar furnishings.

V Other Holidays, Articles, Motifs, Symbols or Representations

Festive holidays, festive articles, festive motifs, symbols or representations not mentioned will have to undergo a *Carborundum* test.

VI Alphabetical Industry Products List

Animated Figures, Display – 9505.10 & 9505.90
Animated Figures, Indoor – See **V** above
Animated figures, Outdoor – See **V** above
Audiotapes, Holiday – Excluded from 95: Chapter 85 Note 6
Baskets, Holiday – See **V** above
Bells & Chimes – Excluded from 95 if Heading 8306
Books, Holiday – See **V** above
Bows – Numerous issues
Calendars – Advent is 9505.10; Others, see **V** above
Candles – Excluded from 95 by 9505 EN (b)
Candle Holders – see **V** above, must be three dimensional
Centerpieces – see **V** above
Collectibles, Limited Edition – see **V** above
Compact discs, Holiday – Excluded from 95: Chapter 85 Note 6
Costumes, Holiday – Excluded with exception; Chapter 95 Note 1(e)
Craft Supplies & Hobby Kits – see **V** above
Display, In-Store Materials – see **V** above
Dolls – Excluded except for Mr. & Mrs. Claus
Door & Window Decorations, Exterior – see **V** above
Door & Window Decoration, Interior – see **V** above
Fabric – too general a term to comment
Figurines – Mr. & Mrs. Claus are 9505; Others see **V** above
Flock – too general a term to comment
Floral, Silk/Polyester – see **V** above
Garland, Bead – see **V** above
Garland, Paper/Ribbon – see **V** above
Garland, Pine – 9505.10
Garland, Tinsel – 9505.10
Giftware – too general a term to comment
Giftwrap, Bags & Boxes – Excluded by 9505 EN (c)

Giftwrap, Paper – Excluded by 9505 EN (c)
Giftwrap, Ribbons & Bows, Bowmakers – Excluded by 9505 EN (c)
Giftwrap, Tags & Seals – Excluded by 9505 EN (c)
Greeting Cards – Functional – must be three dimensional
Home Furnishings, Holiday – see **V** above
Lamp Toppers – see **V** above
Lighting Accessories – see **V** above; electric garlands excluded
Lights, Indoor – functional, must be three dimensional, see **V** above; electric garlands excluded
Lights, Outdoor – functional, must be three dimensional, see **V** above; electric garlands excluded
Musical Decorations – see **V** above
Nativity Sets – 9505.10.30
Nutcrackers – all human representations are 9505; Other – see **V** above
Ornaments, Cloth & Satin Wrap – if for tree – 9505.10.25
Ornaments, Glass – if for tree – 9505.10.10
Ornaments, Limited Edition – if for tree – 9505.10
Ornaments, Metal – if for tree – 9505.10.25
Ornaments, Novelties – if for tree – 9505.10
Ornaments, Paper – if for tree – 9505.10.25
Ornaments, Plastic – if for tree – 9505.10.25
Ornaments, Polyfoam – if for tree – 9505.10.25
Ornaments, Porcelain – if for tree – 9505.10.25
Ornaments, Resin – if for tree – 9505.10.25
Ornaments, Wood – if for tree – 9505.10.15
Outdoor Decorations, Illuminated – see **V** above
Outdoor Decorations, Inflatable – see **V** above
Outdoor Decorations, Non-illuminated – see **V** above
Party goods – too general to comment
Picks, floral Holiday – see **V** above
Plush – too general to comment, but most plush are toys
Potpourri – see **V** above
Ribbon – see **V** above; Excluded by 9505 EN(c)
Rugs, Holiday – Functional, too general to comment
Snow, Artificial – see **V** above
Snow Blankets – see **V** above
Stocking & Hangers – 9505.10
Stocking Stuffers – too general to comment, generally are toys
Storage Boxes, Holiday – Excluded, not used at holiday
Tabletop Decorations, Illuminated – too general to comment
Tabletop Decorations, Nonilluminated – too general to comment
Tinsel, icicles – 9505.10
Tree Preservatives – Excluded, see 9505 EN (a)
Tree Skirts & Mats – 9505.10
Tree Stands – Excluded by 9505 EN (d)
Tree Tops – if tree toppers, 9505.10
Trees, Flocked – Artificial Christmas trees are 9505.10

Trees, Foldaway – Artificial Christmas trees are 9505.10
Trees, Table – Artificial Christmas trees are 9505.10
Trees, Vinyl – Artificial Christmas trees are 9505.10
Videotapes, Holiday – Excluded from 95: Chapter 85 Note 6
Water Globes – see **V** above
Wreaths, Illuminated – see **V** above
Wreaths, Nonilluminated – see **V** above

Other Information

Other Court Cases and stipulations that have affected 9505:

Club Distribution – Christmas Carolers in Sleigh, Slip Op. 96–109 (CIT 1996)

Department 56 – Porcelain Houses, Stipulated Judgment on Agreed Statement of Facts, Decided August 4, 1994, Court No. 93–01–00033

Pending Cases which may have an impact:

Avon Products – Commemorative Plates, Court No.93–03–00194

Questions & Answers

Question 1:

Can a functional item which is normally **FLAT** be considered three dimensional (assuming it met Carborundum)?

Answer to 1:

In Customs view, no. Many decorative functional items are normally flat. Table cloths, potholders and picture frames come to mind. These items would not meet the three dimensional representation test we have established for utilitarian items. The item must be more than a mere silhouette.

Question 2:

Does the pattern or motif of a functional item have to go all the way around?

Answer to 2:

Yes

Question 3:

Does the item have to be used in celebration of and for entertainment on a joyous holiday?

Answer to 3:

Yes. Are picture frames "used in celebration of and for entertainment?" Possibly the only time the company could sell the item—ghost silhouette picture frame—would be Halloween. But would the item only be used at Halloween? Once the picture is put inside the frame it would not be put away until the next years holiday.

Carborundum factor e) "used in the same manner as merchandise which defines the class," allows us to show that the class of the ghost picture frame is picture frames, not festive article used in celebration of and for entertainment on a joyous holiday.

A similar argument can be made for toys. Most toys are sold at Christmas time, but they belong to the class of items known as toys. A stuffed toy Mickey Mouse dressed in a Santa Suit would only be sold during the Christmas selling season, but it is still a toy.

HTS LISTING

Midwest Of Cannon Falls does not overrule Section and Chapter Note exclusions. Further, the court did not invalidate or void any Explanatory Note of Heading 9505 or find them to be at cross-purposes with the statutory language of the heading or subheadings. Therefore, the next several pages list the various Section, Chapter and Explanatory Notes which must be considered when classifying within Heading 9505.

Explanation of the coding on the following listing:

The Section and Chapter Note number which excludes "Articles of Chapter 95" is so noted.

Lines in Bold are the Chapter 95 exclusions.

Lines in bold italics are the Heading 9505 Explanatory Notes exclusions.

(Words in italic, not bold, mean there is a Chapter 95 limitation in that section, chapter or heading)

Sections, Chapter and Headings

Chapter 6: Live Trees and Other Plants

Natural Christmas trees

Chapter 34: Soap, Waxes, Candles, Modeling Pastes and the like

Christmas tree candles (heading 3406)

Christmas candles and Christmas tree candles (heading 3406)

Chapter 36: Explosive, Pyrotechnic Products, Matches, etc.

Fireworks or other pyrotechnic articles of heading 3604

Chapter 39: Plastic—Note 2 (v) excludes "Articles of Chapter 95"

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Yarns, monofilament, cords or gut or the like for fishing, cut to length but not made up into fishing lines, of chapter 39, heading 4206 or Section XI.

Racket strings, tents or other camping goods, or gloves (classified according to their constituent material).

Packagings of plastics or of paper, used during festivals (classified according to constituent material, for example Chapter 39 or 48).

Chapter 40: Rubber—Note 2 (f) excludes "Articles of chapter 95 (other than sports gloves and articles of headings 4011 to 4013)." [4011 & 4012 = tires, 4013 = inner tubes]

Chapter 42: Leather, Containers etc.—Note 1 (l) excludes "Articles of Chapter 95".

Yarns, monofilament, cords or gut or the like for fishing, cut to length but not made up into fishing lines, of chapter 39, heading 4206 or Section XI.
Sports bags or other containers of Heading 4202, 4303, or 4304.

Chapter 43: Fur—Note 2 (f) excludes "Articles of 95".

Sports bags or other containers of Heading 4202, 4303, or 4304.

Chapter 44: Wood—Note 1 (p) excludes "Articles of 95".

Sports craft such as canoes and skiffs (chapter 89), or their means of propulsion (chapter 44 for such articles made of wood.
The heading excludes statuettes, statues and the like of a kind used for decorating places of worship.

Chapter 45: Cork—Note 1 (c) excludes "Articles of 95"

Chapter 48: Paper & Paperboard—Note 1 (p) excludes "Articles of 95".

Packagings of plastics or of paper, used during festivals (classified according to constituent material, for example Chapter 39 or 48).

Chapter 49: Books and Printed matter –Note 1(c) excludes "Playing cards or other goods of chapter 95".

Section XI: Textile and Textile Articles – Note 1 (t) excludes "Articles of Chapter 95".

Yarns, monofilament, cords or gut or the like for fishing, cut to length but not made up into fishing lines, of chapter 39, heading 4206 or Section XI.

Racket strings, tents or other camping goods, or gloves (classified according to their constituent material).

Sports clothing or fancy dress, of textile, of chapter 61 or 62.

Textile flags or bunting, or sails for boats, sailboards, or land craft, of chapter 63.

Packagings of plastics or of paper, used during festivals (classified according to constituent material, for example Chapter 39 or 48).

Chapter 53: Other Vegetable Textile Fibers; Paper Yarn and woven Fabrics of Paper Yarn

Yarns, monofilament, cords or gut or the like for fishing, cut to length but not made up into fishing lines, of chapter 39, heading 4206 or Section XI.

Chapter 54: Man-Made Filaments

Yarns, monofilament, cords or gut or the like for fishing, cut to length but not made up into fishing lines, of chapter 39, heading 4206 or Section XI.

Chapter 55: Man-Made Staple Fibers

Yarns, monofilament, cords or gut or the like for fishing, cut to length but not made up into fishing lines, of chapter 39, heading 4206 or Section XI.

Chapter 56: Wadding, Felt and nonwovens: Special Yarns; Twine, cordage, Ropes and Cables and Articles thereof

Yarns, monofilament, cords or gut or the like for fishing, cut to length but not made up into fishing lines, of chapter 39, heading 4206 or Section XI.

Chapter 61: Articles of Apparel and Clothing Accessories, Knitted or Crocheted

Sports clothing or fancy dress, of textile, of chapter 61 or 62.

Racket strings, tents or other camping goods, or gloves (classified according to their constituent material).

Chapter 62: Articles of Apparel and Clothing Accessories, Not Knitted or Crocheted

Sports clothing or fancy dress, of textile, of chapter 61 or 62.

Racket strings, tents or other camping goods, or gloves (classified according to their constituent material).

Chapter 63: Other Made Up Textile Articles; Needlecraft Sets * * *

Racket strings, tents or other camping goods, or gloves (classified according to their constituent material).
Textile flags or bunting of heading 6307.

Chapter 64: Footwear—Note 1 (f) excludes "Toy footwear or skating boots with ice or roller skates attached; shin-guards or similar protective sportswear (chapter 95)."

Sports footwear (other than skating boots with ice or roller skates attached) of chapter 64, or sports headgear of chapter 65.

Chapter 65: Headwear—Note 1 (c) excludes "Dolls' hats, other toy hats or carnival articles of chapter 95."

Sports footwear (other than skating boots with ice or roller skates attached) of chapter 64, or sports headgear of chapter 65.

Chapter 66: Umbrellas, etc.—Note 1 (c) excludes "Goods of chapter 95"

Walking-sticks, whips, riding-crops or the like (heading 6602), or parts thereof (heading 6603).

Chapter 67: Feathers, Artificial Flowers, Hair—Note 1 (e) Toys, sports equipment, or carnival articles (chapter 95)

Chapter 68: Stone—Note 1 (l) excludes "Articles of Chapter 95."

The heading excludes statuettes, statues and the like of a kind used for decorating places of worship.

Chapter 69: Ceramic—Note 2 (k) excludes "Articles of Chapter 95." CITED IN THE COURT CASE

The heading excludes statuettes, statues and the like of a kind used for decorating places of worship.

Chapter 70: Glass & Glassware—Note 1 (f) excludes "Toys, games, sports equipment, Christmas tree ornaments or other articles of chapter 95 (excluding glass eyes without mechanisms for dolls or for other articles of chapter 95)."

Unmounted glass eyes for dolls or other toys, of heading 7018.

Chapter 71: Precious Metals, jewelry, etc.—Note 1 (n) excludes "Articles covered by note 2 to chapter 95."

Section XV: Articles of Base Metal—Note 1 (l) excludes "Articles of Chapter 95."

Christmas tree stands (classified according to constituent material)

Chapter 73: Articles of Iron or Steel

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Chapter 74: Copper and Articles Thereof

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Chapter 75: Nickel and Articles Thereof

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Chapter 76: Aluminum and Articles Thereof

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Chapter 78: Lead and Articles Thereof

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Chapter 79: Zinc and Articles Thereof

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Chapter 80: Tin and Articles Thereof

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Chapter 82: Tools, Implements, Cutlery, Spoons & Forks, of Base Metal; Parts Thereof of Base Metal

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Chapter 83: Miscellaneous Articles of Base Metal

Bells, gongs or the like of heading 8306.
Frames and mirrors of heading 8306 (parts of General Use)

Section XVI: Machinery and Mechanical Appliances etc.—Note 1 (p) excludes "Articles of Chapter 95."

Chapter 84: Machinery and Mechanical Appliances

Pumps for liquid (heading 8413), filtering or purifying machinery and apparatus for liquids or gases (heading 8421), electric motors (heading 8501), electric transformers (8504), or radio remote control apparatus (heading 8526).

Chapter 85: Electrical Machinery & Equipment; Sound Recorders; TV Image and Sound Recorders and Reproducers and Parts etc.

Note 6. Records, tapes and other media of heading 8523, or 8524 remain classified in those headings, whether or not they are entered with the apparatus for which they are intended.
Pumps for liquid (heading 8413), filtering or purifying machinery and apparatus for liquids or gases (heading 8421), electric motors (heading 8501), electric transformers (8504), or radio remote control apparatus (heading 8526).

Section XVII:

Sports vehicles (other than sleds, bobsleds, toboggans and the like) of section XVII.

Chapter 87: Vehicles Other Than Railway Stock; Parts etc.

Children's bicycles (heading 8712).

Chapter 89: Ships, Boats and Floating Structures

Sports craft such as canoes and skiffs (chapter 89), or their means of propulsion (chapter 44 for such articles made of wood.

Chapter 90: Optical, etc.—Note 1 (k) excludes "Articles of Chapter 95."

Spectacles, goggles or the like, for sports or outdoor games (heading 9004).

Chapter 92: Musical Instruments—

Note 1 (c) excludes "Toy musical instruments or apparatus (heading 9503)."
Decoy calls or whistles (heading 9208).

Chapter 93: Arms & Ammunition—

Note 1 (e) excludes "Bows, arrows, fencing foils or toys (chapter 95)."

Arms or other articles of chapter 93.

Chapter 94: Furniture, Illuminating Articles—

Note 1 (l) excludes "Toy furniture or toy lamps or lighting fittings (heading 9503) billiard tables or other furniture specially constructed for games (heading 9504), furniture for magic tricks or decorations (other than electric garlands) such as Chinese lanterns (heading 9505)."

Electric garlands of all kinds (heading 9405).

Electric garlands of all kinds (heading 9405).

Chapter 96: Miscellaneous Articles—Note 1 (l) excludes "Articles of Chapter 95."

APPENDIX

MIDWEST OF CANNON FALLS, INC. *v.* THE UNITED STATES

Midwest is an importer of holiday related merchandise.

The merchandise at issue:

1. Wooden Nutcrackers
   a. Santa
   b. Soldier
   c. King
   d. Presidents
   e. Athletes
   f. Professionals
2. Wooden pull toy (ice skater)
3. Wooden Toy smoker (Santa)
4. Porcelain and fabric mache Santa
5. Fabric mache Mrs. Claus
6. Cast iron stocking hangers (Santa)
7. Cast iron stocking hangers (Santa with lamb)
8. Cast iron stocking hangers (Christmas elf)
9. Cast iron stocking hangers (stacked animals)
10. Cast iron stocking hangers (cargo car)
11. Terra cotta turkey container
12. Earthenware rabbit
13. Heart-shaped metal wreath
14. Jack-o'-lantern earthenware mug
15. Jack-o'-lantern earthenware pitcher
16. Christmas water globe
17. Easter water globe
18. Santa with chimney smoker
19. Fabric mache Santa with bag of toys
20. Fabric mache Scanda Klaus
21. Fabric mache MacNicholas

22. Porcelain Santa with light-up tree
23. Resin figures (hooded Santa roly-poly)
24. Resin figures (figures decorating tree)
25. Resin figures (Santa in sleigh)
26. Resin figures (Santa with tree)
27. Resin figures (old-fashioned Santa figure)
28. Resin figures (Santa with deer)
29. Resin figures (Santa sewing an American flag)

The trial Court found that the subject items are advertised and sold only to consumers prior to the particular holiday with which they are associated.

Midwest argues that the Halloween, Thanksgiving, Valentine's Day and Easter related items should be classified as festive articles under 9505.90.6000, and the other items should be classified 9505.10.

Definition of Christmas Ornament Under Heading 9505

Customs: Items that fall within the scope of the term "ornament":

1. Must hang from a tree,
2. Must be inexpensive
3. Must be traditionally associated with Christmas [Court's misunderstanding, not the Customs position]
4. Must be non-durable

Midwest—Items need not meet these conditions.

Court—The court agrees with Midwest, with respect to 1, 2 and 3. In that all involved items were non-durable the Court did not rule on the durability issue.

A. The meaning of a tariff term is a question of law.

B. Courts interpret the tariff acts in order to carry out legislative intent.

C. The first source for determining legislative intent is the statutory language.

D. In ascertaining the plain meaning of a particular statutory term, the Court presumes that Congress frames tariff acts using the language of commerce.

E. The Court also presumes that the commercial meaning of a tariff term coincides with its common meaning in the absence to the contrary.

F. Consumers and industry participants do not restrict the common or commercial meaning of the term "ornament" to inexpensive or traditional items.

G. Customs cannot base its argument largely on the Explanatory Notes, in that such notes are inclusive rather than exclusive.

H. Absent legislative intent to the contrary, the term "ornament" should be construed to embrace evolving consumer tastes and covers both modern and traditional themes.

Holding—The term "ornament" as used in heading 9505, HTSUS, does not require items to hang, be inexpensive or traditional in theme or design.

II. Classification

ARTICLE	CLASSIFIED	CLAIMED	DECIDED
1. Wooden Nutcrackers	9502.10.4000	9505.10.1500	9505.10.1500
2. Wooden Pull Toy (Ice Skater)	9502.10.4000	9505.10.1500	9505.10.1500
3. Wooden Toy Smokers	9502.10.4000	9505.10.1500	9505.10.1500
4. Porcelain and Fabric Mache Santa	9502.10.4000	9505.10.2500	9505.10.2500
5. Fabric Mache Mrs. Claus	9502.10.4000	9505.10.2500	9505.10.2500
6. Cast Iron Stocking Hanger (Santa)	9505.10.5000	9505.10.2500	9505.10.2500
7. Cast Iron Stocking Hanger (Santa with lamb)	9505.10.5000	9505.10.2500	9505.10.2500
8. Cast Iron Stocking Hanger (Christmas elf)	9505.10.5000	9505.10.2500	9505.10.2500
9. Cast Iron Stocking Hanger (Stacked animals)	9505.10.5000	9505.10.2500	9505.10.2500
10. Cast Iron Stocking Hanger (Cargo car)	9505.10.5000	9505.10.2500	9505.10.2500
11. Terra Cotta Turkey Container	6913.90.5000	9505.90.6000	6913.90.5000
12. Earthenware Rabbit w/Rabbit	6913.90.5000	9505.90.6000	6913.90.6000
13. Heart-Shaped Wreath	8306.29.0000	9505.90.6000	9505.90.6000
14. Jack-O-Lantern Mug	6912.00.4400	9505.90.6000	9505.90.6000
15. Jack-O-Lantern Pitcher	6912.00.4800	9505.90.6000	9505.90.6000
16. Christmas Water globe	7013.99.5000	9505.10.2500 Or 3926.90.9000	9505.10.2500
17. Easter Water globe	7013.99.5000	9505.90.6000 Or 3926.90.9000	9505.90.6000
18. Santa w/Chimney Smoker	9505.10.5000	9505.10.1500	9505.10.1500
19. Fabric Mache Santa	9505.10.5000	9505.10.2500	9505.10.2500
20. Fabric Mache Scanda Klaus	9505.10.5000	9505.10.2500	9505.10.2500
21. Fabric Mache MacNicholas	9505.10.5000	9505.10.2500	9505.10.2500
22. Santa w/Light-up Tree	9505.10.5000	9505.10.2500	9505.10.2500
23. Resin Figures (Hooded Santa)	9505.10.4000	9505.10.2500	9505.10.2500
24. Resin Figures (Santa with tree)	9505.10.4000	9505.10.2500	9505.10.2500
27. Resin Figures (Old fash. Santa)	9505.10.4000	9505.10.2500	9505.10.2500
28. Resin Figures (Santa with deer)	9505.10.4000	9505.10.2500	9505.10.2500
29. Resin Figures (Santa sewing)	9505.10.4000	9505.10.2500	9505.10.2500
25. Resin Figures (Santa on sleigh)	9505.10.4000	9505.10.2500	9505.10.2500
26. Resin Figures	9505.10.4000	9505.10.2500	9505.10.2500

A. The Court finds:

1. The sample products presented all come within the common definition of the term "doll". Doll is an *eo nomine* provision.
2. The sample products presented are described accurately as Christmas ornaments. The tariff provision for Christmas ornaments is a use provision.

B. The Court uses the five (5) factors delineated in *United States v. Carborundum Co.* To determine the most specific heading under GRI 3 (a). They are:

1. The general physical characteristics of the merchandise,

A. The article is decorated in a motif specific to a recognized holiday.

2. The use, if any, in the same manner as merchandise which defines the class,

B. All of the items are principally, if not exclusively, used only during the holiday season for the specific purpose of decorating or ornamenting the home or Christmas tree.

3. The expectations of the purchasers of the merchandise,

A. The purpose for the purchase is to decorate the home.

4. The channel of trade in which the merchandise moves,

A. The article is marketed during, or immediately prior to, a recognized holiday.

5. The environment of the sale of the merchandise (i.e. accompanying accessories and the manner in which the merchandise is advertised and displayed).

A. Such merchandise is advertised with other articles that are clearly unique to a specific holiday.

ADDITIONAL INFORMATION

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. The CEBB may be accessed by modem or through Customs Home Page on the World Wide Web. If you access it by modem, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 921–6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 921–6236.

The Internet

The Customs home page on the Internet's World Wide Web—which began public operation on August 1, 1996—will also provide the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The home page will post timely information including proposed and final regulations, rulings, news releases, Customs publications and notices, *etc.*, which may be searched, read online, printed or "downloaded" to your own PC. In addition, the CEBB (see above) may be accessed through our Home Page. The Customs Service does not charge the public for this service,

although you will need Internet access to use it. The Internet address for Customs home page is **http://www.customs.ustreas.gov**.

Customs Regulations

The current edition of *Customs Regulations of the United States,* in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1997 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1996 through March, 1997 is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions ("Customs Bulletin")* is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade and Customs related decisions of the U.S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The Customs Bulletin is available for sale from the Superintendent of Documents.

Video Tapes

The U.S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in understanding the new ***Rules of Origin for Textiles and Apparel Products*** which became effective on July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for $20.00 (U.S. funds) directly from the Customs Service. If you require further information, or would like to purchase one or more tapes, please forward your written request to: U.S. Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

In order to assist the trade, Customs has prepared a video tape entitled "Customs Compliance: Why You Should Care." This 30 minute tape is divided into two parts. Part I, almost 18 minutes in length, is designed to provide senior executives and others in importing and exporting companies with an overview of some significant features of the Customs "Modernization Act" and some major reasons for adopting new strategies for minimizing legal exposure under this Act. Part II is intended primarily for compliance officers, legal departments and com-

pany officers involved in importing and exporting. This latter Part, approximately 12 minutes in length, explains why Customs and the trade can benefit from sharing responsibilities under Customs laws and it provides viewers with some legal detail relating to record keeping, potential penalties for non-compliance, and Customs Prior Disclosure program.

Part I features former Customs Commissioner George Weise, Assistant Commissioner for Regulations and Rulings Stuart Seidel, and Motorola's Vice President and Director of Corporate Compliance, Mr. Jack Bradshaw. Assistant Commissioner Seidel is the only speaker in Part II.

The tape is priced at $15.00 including postage. New orders, complete with payment in the form of a check or money order, should be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Operational Oversight Division, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

Informed Compliance Publications

The U.S. Customs Service has also prepared other Informed Compliance publications in the *What Every Member of the Trade Community Should Know About:* series, which are available from the Customs Electronic Bulletin Board and the Customs Home Page (see above). As of the date of this publication, the following booklets were available:

- *Fibers and Yarns*
- *Buying and Selling Commissions*
- *NAFTA for Textiles and Textile Articles*
- *Raw Cotton*
- *Customs Valuation*
- *Textile and Apparel Rules of Origin*
- *Mushrooms*
- *Marble*
- *Peanuts*
- *Caviar*
- *Bona Fide Sales and Sales for Exportation*
- *Caviar*
- *Granite*
- *Internal Combustion Piston Engines*
- *Vehicles, Parts and Accessories*
- *Articles of Wax, Artificial Stone and Jewelry*
- *Tariff Classification*
- *Classification of Festive Articles as a result of Midwest of Cannon Falls Court Case*

Check the Customs Electronic Bulletin Board and the Customs Home Page for more recent publications.

Other Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative

Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000–152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs classification issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Richard W. Goldberg
Donald C. Pogue
Evan J. Wallach

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Dominick L. DiCarlo

Nicholas Tsoucalas

R. Kenton Musgrave

Clerk

Raymond F. Burghardt

Decisions of the United States Court of International Trade

(Slip Op. 97–173)

STC CORP, STC OF AMERICA, INC. AND AMERICAN TAPE CO., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND E.I. DUPONT DE NEMOURS & CO., HOECHST CELANESE CORP. AND ICI AMERICAS INC., DEFENDANT-INTERVENORS

Court No. 95–09–01181

Plaintiff, STC Corporation, STC of America, Inc. and American Tape Company (collectively "STC"), brings this action pursuant to Rule 56.2 of the Rules of this Court for judgment on the agency record. STC challenges the Department of Commerce, International Trade Administration's ("Commerce") final results of the administrative review, entitled *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 60 Fed. Reg. 42,835 (Aug. 17, 1995), *as amended*, 61 Fed. Reg. 5375 (Feb. 12, 1996). STC claims Commerce erred in: (1) not utilizing a tax neutral methodology for adjusting for value-added taxes ("VAT"); and (2) wrongfully including a particular sale of polyethylene terephthalate film in calculating U.S. price.

Held: This case is remanded to Commerce to utilize the court-approved tax-neutral methodology for adjusting for VAT.

[STC's motion granted in part and denied in part. Case remanded.]

(Dated December 15, 1997)

Coudert Brothers (Steven H. Becker and *Kay C. Georgi)* for plaintiff, STC.

Frank W. Hunger, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice; (*Velta A. Melnbrencis*, Assistant Director, and *Lance J. Lerman);* of counsel: *Karen L. Bland*, Attorney-Advisor, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Howrey & Simon (Matthew J. Clark, Michael A. Hertzberg and *Maria Tan Pedersen)* and *Wilmer, Cutler & Pickering (John D. Greenwald)* for defendant-intervenors, E.I. DuPont de Nemours & Company, Hoechst Celanese Corporation and ICI Americas Inc.

OPINION

TSOUCALAS, *Senior Judge:* Plaintiff, STC Corporation, STC of America, Inc. and American Tape Company (collectively "STC"), brings this action pursuant to Rule 56.2 of the Rules of this Court for judgment on the agency record contesting the final results of the Department of Com-

merce, International Trade Administration's ("Commerce") final results of the administrative review, entitled *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 60 Fed. Reg. 42,835 (Aug. 17, 1995), *as amended*, 61 Fed. Reg. 5375 (Feb. 12, 1996).

BACKGROUND

The administrative review at issue encompasses imports of polyethylene terephthalate ("PET") film, sheet and strip from the Republic of Korea covering the period November 30, 1990, through May 31, 1992. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 57 Fed. Reg. 32,521, 32,522 (July 22, 1992). On November 30, 1990, Commerce issued an affirmative preliminary determination and, in accordance with 19 U.S.C. § 1673(e) (1988), directed the Customs Service to suspend liquidation of relevant entries of PET film from Korea. *See Preliminary Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea* ("*Preliminary LTFV Results*"), 55 Fed. Reg. 49,668. On July 8, 1994, Commerce published the preliminary results of the instant review. *See Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review*, 59 Fed. Reg. 35,098. Commerce published the Final Results at issue on August 17, 1995. *See Final Results*, 60 Fed. Reg. at 42,835.

STC claims Commerce erred in: (1) not utilizing a tax-neutral methodology for adjusting for value-added taxes ("VAT"); and (2) wrongfully including a particular sale of PET film in calculating U.S. price.

DISCUSSION

The Court's jurisdiction in this action is derived from 19 U.S.C. § 1516a(a)(2) (1994) and 28 U.S.C. § 1581(c) (1994).

The Court must uphold Commerce's final determination unless it is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B). Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). "It is not within the Court's domain either to weigh the adequate quality or quantity of the evidence for sufficiency or to reject a finding on the grounds of a differing interpretation of the record." *Timken Co. v. United States*, 12 CIT 955, 962, 699 F. Supp. 300, 306 (1988), *aff'd*, 894 F.2d 385 (Fed. Cir. 1990).

1. *Value-Added Tax Adjustment:*

STC challenges the VAT adjustment methodology that Commerce applied in this review, arguing that Commerce should have employed a tax-neutral methodology in adjusting U.S. price for STC's dumping margin. STC's Mem. Supp. Mot. J. Agency R. at 4–5.

Commerce has decided to return to the tax-neutral methodology that the United States Court of Appeals for the Federal Circuit ("CAFC") held was a reasonable statutory interpretation in *Federal-Mogul Corp. v. United States*, 63 F.3d 1572 (Fed. Cir. 1995), and consents to a remand to employ this methodology. Def.'s Partial Opp'n to Mot. J. Agency R. at 11–14.

E.I. DuPont de Nemours & Company, Hoechst Celanese Corporation and ICI Americas Inc. (collectively "DuPont") opposes a remand for Commerce to alter its Final Results VAT methodology, noting that the CAFC permitted, but did not mandate, the tax-neutral methodology in *Federal-Mogul*. DuPont's Opp'n to Mot. J. Agency R. at 10–11.

Pursuant to the CAFC's decision in *Federal-Mogul*, this Court has granted petitioners' requests for a remand for this purpose, to which Commerce has consented, in several instances. *See, e.g., Kolon Indus., Inc. v. United States*, 21 CIT ____, Slip Op. 97–166, at 4 (Dec. 3, 1997); *NSK Ltd. v. United States*, 21 CIT ____, ____, 969 F. Supp. 34, 42 (1997); *Torrington Co. v. United States*, 21 CIT ____, ____, 960 F. Supp. 339, 344 (1997). Hence, in accordance with *Federal-Mogul*, Commerce is required upon remand in this case to implement the court-approved tax-neutral VAT methodology in recalculating the adjustment to U.S. price in STC's dumping margin.

2. *Inclusion of Sale of Film that Allegedly Entered the United States Before the Suspension of Liquidation:*

STC objects to the calculation of U.S. price, claiming that Commerce wrongfully included a particular sale of PET film. According to STC, the film in question was shipped on July 10, 1989, and, as the ocean voyage from Korea typically takes no longer than two months, entered the United States sometime in the fall of 1989. STC claims the film was not sold until May 19, 1992, under invoice AP9–003. Because the order suspending liquidation was published on November 30, 1990, STC emphasizes that liquidation was not suspended on this entry. STC acknowledges that the CAFC has approved the use of sales, as opposed to entries, to calculate U.S. price, but objects to the use of the merchandise involved in the sale at issue.

STC first argues that this merchandise is not subject to the order under 19 U.S.C. § 1675(a)(2) (1988).[1] STC bolsters its argument by referring to Commerce's own policy. In particular, STC points to a recent exception to Commerce basing its calculations on sales of merchandise during the period of review, regardless of entry date. STC's Mem. Supp. Mot. J. Agency R. at 5–8. Under this exception, STC emphasizes that Commerce is to exclude sales of merchandise that entered before the

[1] Section 1675(a)(2) (emphasis added) states the following:

> For the purpose of [determining the amount of any antidumping duty], the administering authority shall determine—
>
> (A) the foreign market value and United States price of *each entry of merchandise subject to the antidumping duty order and included within that determination*, and
>
> (B) the amount, if any, by which the foreign market value of each such entry exceeds the United States price of the entry.

suspension of liquidation when a respondent is able to demonstrate that the merchandise covered by a particular sale entered prior to the suspension of liquidation pursuant to Commerce's preliminary determination in the less-than-fair value ("LTFV") investigation. *Id.* at 9–10. STC here asserts that the merchandise entered the United States before suspension of liquidation, and so, falls within Commerce's exception. *Id.*

As a preliminary matter, STC's reliance on section 1675(a)(2) begs the question of whether the merchandise at issue should be included in the dumping margin calculation. The section specifically includes "each entry of merchandise subject to the antidumping duty order and included within that determination." 19 U.S.C. § 1675(a)(2). Hence, alone it is not dispositive of what merchandise is actually subject to the antidumping duty order and included within that determination; rather, such a decision is still necessary.

Commerce's suspension of liquidation encompassed all PET film entries from Korea "that [we]re entered, or withdrawn from warehouse, for consumption *on or after the date of publication of this notice in the Federal Register.*" *Preliminary LTFV Results*, 55 Fed. Reg. at 49,670. In its assessment of duties, Commerce usually includes all U.S. sales of subject merchandise made during the period of review that are linked to entries covered by a review. As STC noted, however, Commerce has adopted a narrow exception to this general rule in exporter's sales price ("ESP") situations. Because there is usually a lag time between the entry of merchandise into the United States and its actual sale to an unrelated party in the United States, ESP sales may exist for which there are no corresponding entries during the same review period. Consequently, to prevent the inclusion of merchandise that entered the United States before the suspension of liquidation, Commerce excludes from its examination sales that correspond with an entry made prior to suspension if Commerce is satisfied that there is sufficient evidence to link the sale and the entered merchandise. To benefit from this exception, the manufacturer or exporter must present sufficient evidence to prove that: (1) the merchandise entered the United States prior to suspension of liquidation; and (2) the entry corresponds with a particular sale included in the review. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review ("Corrosion-Resistant Carbon Steel")*, 61 Fed. Reg. 18,547, 18,565 (Apr. 26, 1996).

It is well-settled that, in ESP situations, Commerce may calculate a dumping margin based on all sales, rather than entries, made during the review. *See Ad Hoc Comm. of S. Cal. Producers of Gray Portland Cement v. United States*, 19 CIT ____, ____, 914 F. Supp. 535, 544 (1995); *see also Torrington Co. v. United States*, 44 F.3d 1572, 1578–79 (Fed. Cir. 1995) (holding Commerce did not err in basing cash deposit rates on statutory U.S. price instead of entered Customs value). Further, STC does not

challenge Commerce's adoption of its narrow exception.[2] Hence, the gravamen of this dispute involves whether STC provided sufficient data to show that the merchandise in question entered the United States before suspension of liquidation pursuant to the Preliminary LTFV Results and that the corresponding entry can be tied to a sale under review.

STC fails to present actual evidence demonstrating that the merchandise at issue was entered prior to the suspension of liquidation but sold during the period of review; STC merely provides arguments to support its claim. It is uncontroverted that certain PET film was shipped from Korea to the United States on July 10, 1989. *See, e.g., STC's Questionnaire Response*, C.R. Doc. No. 11, Ex. C–1, at 4a, STC's App., Ex. 2 (Nov. 3, 1992) (STC sales listing). Moreover, it is clear upon inspection of the record that STC sold PET film merchandise under invoice AP9–003 in May of 1990, during the period of review. *See id.* However, there is no concrete evidence documenting when the merchandise shipped in July of 1989 arrived in the United States. Nevertheless, even assuming that this merchandise entered before the suspension of liquidation, STC provides no underlying documentary support demonstrating the validity of its sales data to substantiate its assertion that this merchandise was the same merchandise sold under invoice AP9–003. Rather, STC relies on its questionnaire responses, the administrative hearing transcript and its administrative case brief to support its claim. To satisfy its burden, STC would have had to provide Commerce with evidence such as entry documents, invoices, shipment records, inventory logs or other internal records. *Compare Certain Stainless Steel Wire Rods From France: Preliminary Results of Antidumping Duty Administrative Review*, 61 Fed. Reg. 8915, 8916 (Mar. 6, 1996) (Commerce verified that the respondent satisfactorily linked certain sales during the review to entries of merchandise prior to the suspension of liquidation) *with Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Italy; Final Results of Antidumping Duty Administrative Review*, 57 Fed. Reg. 8295, 8296 (Mar. 9, 1992) (respondent's methodology provided no assurance that any sale during the period of review was of merchandise entered before the suspension of liquidation). The record is devoid of such evidence and the Court cannot simply rely on STC's unsubstan-

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[2] Dupont disagrees with Commerce's practice of excluding sales satisfying Commerce's link test. In particular, DuPont claims this exception is in conflict with the court's decision in *Ad Hoc Committee*, 19 CIT ___, 914 F. Supp. 535. Dupont's Opp'n to Mot. J. Agency R. at 8 n.3.

This Court concludes that Commerce's exclusion is entirely consistent with *Ad Hoc Committee* and reasonable. In *Ad Hoc Committee*, the court affirmed Commerce's practice of considering all sales as reasonable even though it recognized this practice could result in the consideration of entries made prior to the suspension of liquidation. 19 CIT at ___, 914 F. Supp. at 544. First, even Commerce has recognized that the *Ad Hoc Committee* case was not one in which a respondent linked specific sales during the period of review to specific entries prior to the suspension of liquidation. *See Corrosion-Resistant Carbon Steel*, 61 Fed. Reg. at 18,564–65. Further, the court's holding allowing consideration of all sales in the circumstances of *Ad Hoc Committee* does not preclude a finding that Commerce's practice of excluding certain sales in this case is unreasonable. Indeed, the Court finds that the employment of Commerce's link test results in a more accurate administration of the dumping statute because it properly excludes irrelevant sales from the dumping determination. *See, e.g., Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990) (noting the importance of ensuring accurate dumping margins); *Federal-Mogul Corp. v. United States*, 18 CIT 1168, 1172, 872 F. Supp. 1011, 1014 (1994) (emphasizing that "fair and accurate determinations are fundamental to the proper administration of our dumping laws.").

tiated arguments and questionnaire responses that this merchandise is one and the same.

Consequently, as STC is unable to satisfy its burden to provide the requisite link between the merchandise entering the United States prior to suspension of liquidation and the sale made during the review, Commerce properly included the sale at issue in its calculation of U.S. price.

CONCLUSION

In accordance with the foregoing opinion, this case is remanded to Commerce to utilize the court-approved tax-neutral methodology for adjusting for VAT. Commerce is sustained as to all other issues.

(Slip Op. 97–174)

PYKE MANUFACTURING CO., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 95–09–01173

Plaintiff moves for summary judgment pursuant to U.S. CIT R. 56, asserting it is entitled to a refund of antidumping duties paid upon liquidation of ten entries of man-made fiber sweaters from Taiwan. Plaintiff argues it is entitled to a refund because the antidumping duty order, pursuant to which the duties were assessed, was revoked following litigation in this Court. Plaintiff contends this Court has jurisdiction to hear its claim pursuant to 28 U.S.C. § 1581(i). Defendant cross-moves for summary judgment, claiming this Court does not have jurisdiction over plaintiff's claim pursuant to 28 U.S.C. § 1581(i). Alternatively, defendant argues that should the Court find it has jurisdiction over plaintiff's claim, defendant is entitled to the entry of summary judgment in its favor in this matter.

Held: The Court declines to exercise its jurisdiction pursuant to 28 U.S.C. § 1581(i) to hear plaintiff's claim. Accordingly, plaintiff's Motion for Summary Judgment is denied and defendant's Cross-Motion for Summary Judgment is granted.

(Dated December 17, 1997)

Irving A. Mandel (Thomas J. Kovarcik, Steven R. Sosnov), New York, NY, for plaintiff.

Frank W. Hunger, Assistant Attorney General of the United States; *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Shalom Brilliant); Karen Bland,* Office of the Chief Counsel for Import Administration, United States Department of Commerce, of Counsel, for defendant.

OPINION

CARMAN, *Chief Judge:* This case is before the Court on cross-motions for summary judgment pursuant to U.S. CIT R. 56. Plaintiff challenges the United States Customs Service's ("Customs") retention of antidumping duties paid on ten entries of man-made fiber sweaters from Taiwan following their liquidation in March 1992. The duties were assessed pursuant to an antidumping duty order which was in effect at the time of the entries' liquidation, but was revoked in July 1994, subsequent to the liquidation of the ten entries at issue. Plaintiff moves for

summary judgment contending it is entitled to a refund of the $105,920 in antidumping duties it paid in April 1992, plus interest, and asserts this Court has jurisdiction pursuant to 28 U.S.C. § 1581(i) (1988) to decide its claim.

Defendant opposes plaintiff's Motion for Summary Judgment and has filed a Cross-Motion for Summary Judgment. Defendant asserts this Court does not have jurisdiction to hear plaintiff's claim pursuant to 28 U.S.C. § 1581(i), and alternatively argues that should this Court determine it does have jurisdiction pursuant to 28 U.S.C. § 1581(i) to decide plaintiff's claim, defendant is entitled to the entry of summary judgment in its favor.

BACKGROUND

On October 19, 1989, the Department of Commerce ("Commerce") initiated an antidumping duty investigation of imports of sweaters wholly or in chief weight of man-made fiber from Taiwan. *See Initiation of Antidumping Duty Investigations: Sweaters Wholly or in Chief Weight of Man-Made Fiber From Hong Kong, the Republic of Korea, and Taiwan*, 54 Fed. Reg. 42,972 (Dep't Comm. 1989). Commerce published its preliminary determination that the sweaters in question were being, or were likely to be, sold in the United States at less than fair value on April 27, 1990, and instructed Customs to suspend liquidation of entries of man-made fiber sweaters from Taiwan that were entered, or withdrawn from warehouse for consumption, on or after that date. *See Preliminary Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan*, 55 Fed. Reg. 17,779 (Dep't Comm. 1990) (prelim. determ.) *("Preliminary Determination").* Pursuant to the instructions to suspend liquidation, importers were required to post a bond or remit a cash deposit in the amount equal to the estimated antidumping duties calculated in the *Preliminary Determination*. *See* 19 U.S.C. § 1673b(d)(2) (1988) (following issuance of affirmative preliminary determination Commerce "shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated average amount by which the foreign market value exceeds the United States price"). Following Commerce's publication of its affirmative preliminary determination, plaintiff made ten entries of man-made fiber sweaters from Taiwan between May 13, 1990 and September 19, 1990.

On September 24, 1990, based upon its final determination that imports of man-made fiber sweaters from Taiwan were being sold at less than fair value, and a final determination by the International Trade Commission ("ITC") that a United States industry was materially injured by reason of these imports, Commerce issued an antidumping duty order covering imports of man-made fiber sweaters from Taiwan. *See Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan*, 55 Fed. Reg. 39,033 (Dep't

Comm. 1990). Several importers and exporters of man-made fiber sweaters from Taiwan contested the ITC's material injury determination before this Court. *See Chung Ling Co., Ltd. v. United States*, 16 CIT 636, 805 F. Supp. 45 (1992) (*"Chung Ling I"*). Plaintiff was not a party to that challenge and did not seek a preliminary injunction suspending the liquidation of its entries.

On September 19, 1991, Commerce published a notice informing interested parties of their opportunity to request an administrative review of its antidumping duty order covering man-made fiber sweaters from Taiwan. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 56 Fed. Reg. 47,450 (Dep't Comm. 1991). The notice informed interested parties that if Commerce did not receive a timely request for an administrative review, it would instruct Customs to assess antidumping duties upon entries of man-made fiber sweaters from Taiwan at a rate equal to the cash deposit or bond rate for estimated duties required on the merchandise at the time of entry. Pyke did not request an administrative review of Commerce's antidumping duty order on sweaters of man-made fiber from Taiwan, making its ten entries subject to the automatic assessment of antidumping duties at the estimated rate required on the merchandise at the time of entry pursuant to 19 C.F.R. § 353.22(e) (1992) (providing where administrative review of antidumping duty order is not requested, Commerce "without additional notice, will instruct the Customs Service to assess antidumping duties on the merchandise * * * at rates equal to the cash deposit of, or bond for, estimated antidumping duties required on that merchandise at the time of entry"). Customs liquidated the entries in question on March 6, 1992, and the liquidated duties were paid by plaintiff on April 16, 1992.

On July 28, 1992, this Court remanded the ITC's material injury determination, finding it to be unsupported by substantial evidence on the record and not otherwise in accordance with law. *See Chung Ling I*, 805 F. Supp. at 56. On remand, the ITC determined that a United States industry was not materially injured or threatened with material injury by reason of imports of man-made fiber sweaters from Taiwan. *See Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan*, USITC Pub. 2577, Views on Remand in Inv. Nos. 731–TA–448–450 (1992). This Court sustained the ITC's negative remand determination. *See Chung Ling Co., Ltd. v. United States*, 17 CIT 829, 840, 829 F. Supp. 1353, 1363 (1993) *("Chung Ling II")*. The domestic producers appealed the decision of this Court to the United States Court of Appeals for the Federal Circuit ("Federal Circuit"), which affirmed this Court's decision on June 15, 1994. *See Chung Ling Co., Ltd. v. United States*, 29 F.3d 645 (Fed. Cir. 1994) *("Chung Ling III")*.

Pursuant to the final judgment entered by the Federal Circuit, Commerce published a notice on July 14, 1994, revoking the antidumping duty order with respect to all unliquidated entries of man-made fiber

sweaters from Taiwan, effective April 27, 1990. *See Sweaters Wholly or in Chief Weight of Man-Made Fiber From Hong Kong, Korea, and Taiwan, Notice of Court Decision, Revocation of Antidumping Duty Orders, and Termination of Administrative Reviews*, 59 Fed. Reg. 35,911 (Dep't Comm. 1994) *("Notice of Revocation")*. Following publication of the *Notice of Revocation*, Pyke and its counsel wrote letters to Customs dated September 2, 1994 and May 1, 1995, respectively, requesting a refund of the antidumping duties paid. These requests were denied, and Pyke commenced this action on September 15, 1995.

CONTENTIONS OF THE PARTIES

A. *Plaintiff:*

Plaintiff has filed a Motion for Summary Judgment pursuant to U.S. CIT R. 56, contending it is entitled to "the return of the money it deposited during the course of the unfinished antidumping action" because the antidumping order, pursuant to which duties were assessed, was revoked subsequent to plaintiff's payment of antidumping duties in April 1992. (Pl.'s Br. in Supp. of Mot. for Summ. J. ("Pl.'s Br.") at 3.) Plaintiff contends its cause of action arose on July 14, 1994, when Commerce published a notice revoking the antidumping duty order with respect to all unliquidated entries of sweaters of man-made fiber from Taiwan. *See Notice of Revocation*, 59 Fed. Reg. at 35,911. Plaintiff asserts its claim falls within this Court's jurisdiction under 28 U.S.C. § 1581(i), and contends its claim, which was filed within fourteen months of publication of Commerce's *Notice of Revocation* of the antidumping duty order on sweaters of man-made fibers from Taiwan, satisfies the applicable two-year statute of limitations codified at 28 U.S.C. § 2636(h) (1988).

Plaintiff appears to argue that it would have been impossible to have obtained relief by filing a protest challenging Customs' retention of the antidumping duties and seeking judicial review of Customs' denial of its protest pursuant to 28 U.S.C. § 1581(a). In support of this argument, plaintiff cites *Mitsubishi Electronics America, Inc. v. United States*, 44 F.3d 973, 976–77 (Fed. Cir. 1994) *("Mitsubishi")*, which held Customs' collection of antidumping duties assessed pursuant to a valid antidumping duty order is not an act subject to protest pursuant to 19 U.S.C. § 1514(a)–(b). Although the plaintiff's papers never explicitly make the contention, the Court presumes the plaintiff cites *Mitsubishi* for the proposition that even though plaintiff did file a protest contesting the Customs Service's retention of the antidumping duties, it was impossible for plaintiff to obtain relief on its claim by filing a protest, and therefore plaintiff's sole means for obtaining relief in this matter is for this Court to exercise its jurisdiction pursuant to 28 U.S.C. § 1581(i) to decide plaintiff's claim. The Court presumes plaintiff has pursued this line of argument knowing this Court will not exercise its jurisdiction pursuant to 28 U.S.C. § 1581(i) if "'jurisdiction under another subsection of § 1581 is * * * available.'" *Norcal/Crosetti Foods, Inc. v. United States*, 963 F.2d 356, 359 (Fed. Cir. 1992) (emphasis omitted) (*quoting Miller & Co. v. United States*, 5 Fed. Cir. (T) 122,124, 824 F.2d 961, 963 (1987)).

B. *Defendant:*

Defendant raises two arguments in support of its Cross-Motion for Summary Judgment and in response to plaintiff's assertions. First, defendant argues the Court does not have jurisdiction pursuant to 28 U.S.C. § 1581(i) to hear plaintiff's claim. Defendant contends "Pyke could have obtained judicial review based upon the jurisdiction that 28 U.S.C. § 1581(c) confers." (Mem. In Supp. of Def.'s Cross-Mot. for Summ. J. and in Opp'n to Pl.'s Mot. for Summ. J. ("Def.'s Br.") at 7.) According to the defendant, "[h]ad Pyke resorted to the available administrative remedies, it would have been entitled to bring an action for judicial review of the resulting administrative determination pursuant to 19 U.S.C. § 1516a, and this Court would have possessed jurisdiction to entertain that action pursuant to 28 U.S.C. 1581(c)." *(Id.* at 9.) Defendant argues that permitting Pyke, which failed to pursue its administrative remedies, to invoke the Court's jurisdiction pursuant to 28 U.S.C. § 1581(i) would inappropriately facilitate Pyke's "circumvent[ion] [of the] applicable administrative procedures" contemplated by the statute. *(Id.* at 7.) Additionally, defendant asserts this Court may not exercise its jurisdiction over plaintiff's claim pursuant to 28 U.S.C. § 1581(i) because plaintiff's claim was not filed within the two-year statute of limitations which applies to claims brought under § 1581(i), codified at 28 U.S.C. § 2636(h) (1988).

Alternatively, defendant argues it should prevail on its Cross-Motion for Summary Judgment should the Court determine it does have subject matter jurisdiction pursuant to § 1581(i) over plaintiff's claim. Defendant contends the entries at issue were eligible for liquidation in accordance with Customs' automatic assessment procedure based on Pyke's failure to request an administrative review. *See* 19 C.F.R. § 353.22(e). According to the defendant, because Pyke did not request an administrative review and "[b]ecause there was no preliminary injunction enjoining the liquidation of Pyke's entries, Customs was obligated as a matter of law to liquidate these entries." (Def.'s Br. at 14.) Finally, defendant argues Pyke's entries, which were liquidated on March 6, 1992, were not covered by the *Notice of Revocation* published by Commerce. Defendant notes, the *Notice of Revocation* explicitly stated "revocation is effective April 27, 1990, *for all unliquidated entries.*" (Def.'s Br. at 17 (*quoting Notice of Revocation*, 59 Fed. Reg. at 35,911) (emphasis added in defendant's brief).)

STANDARD OF REVIEW

This case is before the Court on cross-motions for summary judgment. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." U.S. CIT R. 56(d). "The Court will deny summary judgment if the parties present a dispute about a fact such that a reasonable trier of fact could return a verdict against the movant." *Ugg Int'l, Inc. v. United*

States, 17 CIT 79, 83, 813 F. Supp. 848, 852 (1993) (quotation and citation omitted). When appropriate, summary judgment is a favored procedural device to "secure the just, speedy and inexpensive determination" of an action. *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1562 (Fed. Cir.1987) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S.Ct. 2548, 2555, 91 L.Ed.2d 265 (1986)) (internal quotations omitted). Because this case does not raise any genuine issue of material fact the Court may properly resolve this matter by summary judgment.

DISCUSSION

The parties dispute whether this Court may exercise jurisdiction over plaintiff's claim pursuant to 28 U.S.C. § 1581(i), a provision "intended to give the Court of International Trade broad residual authority over civil actions arising out of federal statutes governing import transactions." *Conoco, Inc. v. Foreign-Trade Zones Bd.*, 18 F.3d 1581, 1588 (Fed. Cir. 1994). Section 1581(i) provides:

> In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)–(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—
>
> (1) revenue from imports or tonnage;
>
> (2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;
>
> (3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or
>
> (4) administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.

28 U.S.C. § 1581(i) (1988). Plaintiff asserts this Court has jurisdiction to hear its claim pursuant to 28 U.S.C. § 1581(i)(2) and (4), while defendant maintains this Court lacks subject matter jurisdiction over plaintiff's claim.

A fundamental guide to this Court's exercise of its jurisdiction under § 1581(i) is that the Court will decline to exercise its jurisdiction where "'jurisdiction under another subsection of § 1581 *is or could have been available*, unless the remedy provided under that other subsection would be manifestly inadequate.'" *Norcal/Crosetti Foods, Inc.*, 963 F.2d at 359 (*quoting Miller & Co. v. United States*, 5 Fed. Cir.(T) 122, 124, 824 F.2d 961, 963 (1987)). While § 1581(i) has been characterized as a "catch-all" provision providing this Court with a broad residual grant of jurisdiction, *see, e.g., id.* at 359; *Pac Fung Feather Co., Ltd. v. United States*, 911 F. Supp. 529, 533 (CIT 1995), this Court will not exercise its jurisdiction pursuant to § 1581(i) in a manner that would enable litigants to "circumvent the jurisdictional scheme of review" established in

28 U.S.C. § 1581(a)–(h). *St. Paul Fire & Marine Ins. Co. v. United States*, 959 F.2d 960, 963 (Fed. Cir. 1992).

In support of its argument this Court has jurisdiction pursuant to 28 U.S.C. § 1581(i) to decide its claim that Customs has retained improperly the antidumping duties paid in 1992, Pyke cites *Mitsubishi Electronics America, Inc. v. United States*, 44 F.3d 973 (Fed. Cir. 1994) *("Mitsubishi"). Mitsubishi*, similar to the matter presently before the Court, involved a challenge to Customs' liquidation of goods through the application of its automatic duty assessment regulation, codified at 19 C.F.R. § 353.53a(d)(1) (1987). Plaintiff contends the Federal Circuit's opinion in *Mitsubishi* is controlling in this matter and intimates this Court should exercise its jurisdiction pursuant to § 1581(i) to decide plaintiff's claim based on the Federal Circuit's decision in *Mitsubishi*.

The Court finds plaintiff's citation of *Mitsubishi* to support its contention this Court should exercise its jurisdiction pursuant to § 1581(i) unpersuasive. In the course of its arguments contending this Court should exercise its jurisdiction pursuant to 28 U.S.C. § 1581(i) to decide its claim, plaintiff fails to address the fact it could have obtained adequate relief on its claim pursuant to another subsection of § 1581. *See Miller & Co.*, 5 Fed. Cir.(T) at 124, 824 F.2d at 963 ("Section 1581(i) jurisdiction may not be invoked when jurisdiction under another subsection of § 1581 is or could have been available, unless the remedy provided under that other subsection would be manifestly inadequate."). Plaintiff could have obtained relief by challenging the ITC's material injury determination pursuant to 19 U.S.C. § 1516a(a)(2)(A)(i) (1988), a challenge which this Court would have had jurisdiction to review pursuant to 28 U.S.C. § 1581(c).[1] Plaintiff's ability to have obtained adequate relief by challenging the ITC's material injury determination in this Court is clearly illustrated by the *Chung Ling* litigation, in which other interested parties to the antidumping duty investigation *did in fact* obtain relief and avoided assessment of antidumping duties pursuant to the antidumping duty order on man-made fiber sweaters from Taiwan. *See Chung Ling I,* 16 CIT at 649, 805 F. Supp. at 56 (remanding ITC's material injury determination); *Chung Ling II*, 17 CIT at 840, 829 F. Supp. at 1363 (sustaining ITC's negative material injury determination following remand), *aff'd*, *Chung Ling III*, 29 F.3d at 645. As suggested above, this Court reviewed the challenge to the ITC's material injury determination in the *Chung Ling* litigation pursuant to its jurisdiction under 28 U.S.C. § 1581(c). *See* 16 CIT at 637, 805 F. Supp. at 47. It is clear that plaintiff, had it chosen to avail itself of the administrative review procedures made available by the statute, could have obtained the same relief

[1] Defendant argues plaintiff's claim is not reviewable pursuant to 28 U.S.C. § 1581(i) because plaintiff "did not avail itself of the available administrative procedures," and notes Pyke failed to "request an administrative review" prior to Customs assessing antidumping duties at the rate established in Commerce's *Final Determination*. (Def.'s Br. at 9.) While defendant's observation that plaintiff failed to request an administrative review is accurate, in evaluating whether plaintiff could have obtained adequate relief by invoking this Court's jurisdiction pursuant to 28 U.S.C. § 1581(c), the Court notes the significance of the fact that other interested parties to the antidumping investigation on man-made fiber sweaters did in fact obtain relief by challenging the ITC's material injury determination, which this Court reviewed pursuant to 28 U.S.C. § 1581(c) (1988).

as the parties to the *Chung Ling* litigation and avoided the assessment of duties pursuant to the antidumping duty order which was subsequently revoked. This Court finds plaintiff failed to exercise its rights to seek a remedy by pursuing a claim which this Court would have had jurisdiction to review pursuant to 28 U.S.C. § 1581(c), and, therefore, declines to exercise jurisdiction over this matter pursuant to 28 U.S.C. § 1581(i).

Additionally, were the Court to exercise its jurisdiction pursuant to 28 U.S.C. § 1581(i), it would be in contravention of the maxim that Customs' liquidation of an entry becomes final as to all parties unless a protest is filed within ninety days of that liquidation. *See* 19 U.S.C. § 1514(a) (1988) (providing decisions by Customs concerning liquidation "shall be final and conclusive upon all persons * * * unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade"). This Court will not exercise its jurisdiction pursuant to 28 U.S.C. § 1581(i) to examine Customs' valid liquidation of the ten entries[2] which became final as to all parties ninety days after the entries in issue were liquidated on March 6, 1992. *See Zenith Radio Corp. v. United States*, 1 Fed. Cir.(T) 74, 78, 710 F.2d 806, 810 (1983) ("Once liquidation occurs, a subsequent decision by the trial court on the merits * * * can have no effect on the dumping duties assessed on entries * * *.").

Finally, the Court notes even if it were to exercise its jurisdiction pursuant to 28 U.S.C. § 1581(i) to hear plaintiff's claim, it would be barred from taking any action on the claim by the applicable statute of limitations. *See* 28 U.S.C. § 2636(h) (1988) ("A civil action of which the Court of International Trade has jurisdiction under section 1581 of this title, other than an action specified in subsections (a)–(h) of this section, is barred unless commenced * * * within two years after the cause of action first accrues."). As the Federal Circuit made clear in *Mitsubishi*, a cause of action for relief from the automatic assessment of antidumping duties accrues the day after plaintiff's opportunity to request an administrative review expires. *See Mitsubishi*, 44 F.3d at 978 (noting plaintiff had opportunity to request review through June 30, 1987 and determining plaintiff's "cause of action accrued, and the statute of limitations began to run, on July 1, 1987 when all the events necessary to state the claim had occurred"). In this case, the Court finds any cause of action plaintiff had against Customs' automatic assessment of antidumping duties pursuant to 19 C.F.R. § 353.22(e) arose on October 1, 1991, the day after the last date plaintiff had the opportunity to request an admin-

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[2] The Court rejects plaintiff's argument that Customs' liquidation was invalid. (*See* Pl.'s Br. at 6–8.) Pyke did not request an administrative review of the antidumping duty order, it was not a party to the *Chung Ling* litigation challenging the ITC's material injury determination, and it did not seek a preliminary injunction to enjoin liquidation of the ten entries at issue. The ten entries at issue were eligible to be liquidated in accordance with Customs' automatic duty assessment procedure, codified at 19 C.F.R. § 353.22(e), and were properly liquidated consistent with the regulation on March 6, 1992. Thus, the ten entries did not fall with the *Notice of Revocation* published by Commerce, which specifically noted it revoked the antidumping duty order on man-made fiber sweaters from Taiwan, effective April 27, 1990, with respect to all unliquidated entries. *See Notice of Revocation*, 59 Fed. Reg. at 35,911.

istrative review. *See Opportunity to Request Administrative Review,* 56 Fed. Reg. 47,450 ("Not later than September 30, 1991, interested parties may request administrative review" of Commerce's determination with respect to man-made fiber sweaters from Taiwan); *Mitsubishi,* 44 F.3d at 978. Plaintiff's cause of action did not, as plaintiff contends, arise upon Commerce's publication of the *Notice of Revocation* on July 14, 1994. By its terms, the notice applied only to those entries which remained unliquidated as of April 27, 1990. Because plaintiff's claim, which was filed on September 15, 1995, does not fall within the two-year statute of limitations established by 28 U.S.C. § 2636(h) on claims brought pursuant to 28 U.S.C. § 1581(i), the Court finds that even if it were to exercise its jurisdiction pursuant to 28 U.S.C. § 1581(i) to decide plaintiff's claim, the claim would have to be dismissed as time-barred.

CONCLUSION

For the reasons stated above, the Court declines to exercise its jurisdiction pursuant to 28 U.S.C. § 1581(i) (1988) to decide plaintiff's claim seeking a refund of antidumping duties paid in April 1992. Plaintiff's Motion for Summary Judgment is denied and defendant's Cross-Motion for Summary Judgment is granted.

(Slip Op. 97–175)

INNOTECH AVIATION LTD., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 92–04–00244

[Upon consideration of cross motions for summary judgment, the Court examines the legal sufficiency of a duty-free entry certification under the Agreement on Trade in Civil Aircraft. *Held:* Plaintiff's duty-free entry certification is legally sufficient and defendant, United States Customs Service, erred in denying plaintiff's protest. Defendant's motion for summary judgment denied. Plaintiff's motion for summary judgment granted.]

(Decided December 18, 1997)

Stafford, Trombley, Purcell, Lahtinen, Owens & Curtin, P.C. (William L. Owens), for plaintiff.

Frank W. Hunger, Assistant Attorney General; *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Barbara M. Epstein),* for defendant.

OPINION

MUSGRAVE, *Senior Judge:* This action is before the Court on cross motions for summary judgment pursuant to CIT R. 56. Plaintiff, Innotech Aviation, Ltd. ("Innotech"), contests the denial by the United States Customs Service ("Customs") of a protest seeking duty-free entry of a civil aircraft engine.

BACKGROUND

The dispute in this case concerns the duty rate applicable to an aircraft engine imported by Innotech. The aircraft engine was entered on January 10, 1990, and remained in the U.S. for sixty days as a replacement engine for an aircraft whose original engine was undergoing repairs. Innotech filed entry documents claiming duty-free entry for the replacement engine pursuant to the Agreement on Trade in Civil Aircraft ("ATCA"). Along with the entry documents, Customs' regulations require an importer to file a certification attesting to the eligibility of its merchandise for duty-free treatment under the ATCA, or to have on file with Customs an approved "blanket" certification, covering all qualifying merchandise for up to one year, to the same effect. Innotech did not file an entry-by-entry certification with the entry documents for its engine, but did submit a blanket certification request to Customs before the entry of its aircraft engine. Customs alleged that it did not have Innotech's blanket certification on file at the time of entry of the aircraft engine, however, and entered the engine under the claimed classification but without the additional "C" prefix denoting duty-free entry, instead charging a 5% duty rate on the engine.

Innotech protested on March 19, 1991, asserting that it had submitted a blanket certification request to Customs on November 9, 1989, two months before the aircraft engine was entered. Innotech's protest included a copy of the blanket certification request and a description of the chain of events linking the blanket certification request's movements from Innotech to its customs' broker, F. W. Myers, and finally to Customs. Customs argued that it had no record of receiving the certification request, and stated, in denying the protest, that Innotech's failure to have a blanket ATCA certification on file or presented at the time of the entry of the aircraft engine precluded Innotech from the privilege of duty-free entry. Innotech asserts that Customs did have the certification at the time of entry, but Customs contends that the certification itself is legally insufficient to qualify for ATCA treatment and thus could not have been approved at the time of entry. Innotech asserts that the certification was legally sufficient, and that Customs should have accepted its claimed entry classification. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1581(a), and finds that Innotech's ATCA certification is legally sufficient and that the Customs service erred in refusing Innotech duty-free classification for its engine.

STANDARD OF REVIEW

Decisions of the Customs Service are presumed to be correct, 28 U.S.C. § 2639(a)(1) (1994), but the presumption of correctness applies solely to factual questions and it is the duty of this Court to find the cor-

rect result.[1] The classification decision entails a three-step process including a factual and a legal inquiry, and an ultimate mixed question involving both factual and legal components. The factual inquiry is subject to the "clearly erroneous" standard while the purely legal and ultimate mixed questions are reviewed *de novo*. *Bausch & Lomb, Inc. v. United States*, 21 CIT ____, ____, 957 F. Supp. 281, 284 (1997).

Both parties have moved for summary judgment. Summary judgment is appropriate if "there is no genuine issue as to any material fact * * * and the moving party is entitled to judgment as a matter of law." CIT R. 56(d); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). "The party opposing summary judgment may not rest on its pleadings, but must respond with specific facts showing the existence of a genuine issue for trial." *Pfaff American Sales Corp. v. United States*, 16 CIT 1073, 1075 (1992) (citations omitted).

The Court of Appeals for the Federal Circuit considers the use of summary judgment to be an efficient mechanism for the resolution of disputes.

> The recent trilogy of Supreme Court cases establishes that "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'"

Avia Group Int'l, Inc. v. L.A. Gear California, Inc., 853 F.2d 1557 (Fed. Cir. 1988) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555, 91 L.Ed.2d 265 (1986)). The Court finds that no genuine issue as to any material fact exists in this case.

DISCUSSION

This case presents the Court with one issue: whether the ATCA certification that Innotech submitted to Customs is legally sufficient to qualify for ATCA duty-free treatment. On this purely legal question, the Court finds that Innotech's ATCA certification is legally sufficient and that Customs erred in not granting Innotech's duty-free classification for its aircraft engine.

As a preliminary matter, Customs states in its briefs that it never received Innotech's blanket certification request and thus could not grant Innotech's duty-free classification. Customs argues that its regulations bar an importer's goods from duty-free treatment under the ATCA where the importer fails to file an ATCA certification either prior to or simultaneous with the entry of ATCA-eligible goods. Customs' regulation reads:

> At the time of filing the entry summary, the importer of civil aircraft parts shall submit a certificate in substantially the form described

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[1] *See Jarvis Clark Co. v. United States*, 2 Fed. Cir. (T) 70, 75, 733 F.2d 873, 878 (1984) ("the court's duty is to find the correct result, by whatever procedure is best suited to the case at hand"), *Goodman Mfg., Inc. v. United States*, 13 Fed. Cir. (T) ____, ____, 69 F.3d 505, 508 (1995) (the statutory presumption of correctness attaches only to an agency's factual determinations), *and Rollerblade, Inc. v. United States*, 15 Fed. Cir. (T) ___, 112 F.3d 481 (1997) (legal issues are not afforded deference under 28 U.S.C. § 2639 or under the administrative deference standard set forth in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778, 81 L.Ed.2d 694 (1984)).

> in * * * this section. As an alternative, an importer * * * may submit a blanket certification * * *. The certification may not be treated as a missing document for which a bond may be posted. Failure to provide the certification at the time of filing the entry summary or to have an approved blanket certification on file with the district director where the entry summary is filed shall result in a dutiable entry.

19 C.F.R. § 10.183(c)(2) (1991). Customs argues that Innotech did not file nor have on file an ATCA certification at the time of entry of its aircraft engine and thus, based on the above regulation, must deny Innotech's duty-free entry classification.

Customs' position does not withstand scrutiny. The affidavit of Innotech's counsel, William L. Owens, states that Customs informed Innotech that its certification had been received but not yet approved. Owens Aff. ¶ 11. The affidavit of Innotech's customs broker, Steven P. Weiss, and Innotech's anwers to Customs' interrogatories, support this statement and clearly establish that Customs did have Innotech's certification at the time of entry of the aircraft engine. *See* Weiss Aff. ¶¶ 4–7 *and* Def.'s Br. Supp. Def.'s Mot. Summ. J. at Ex. 2. Customs has not provided the Court with any information to contradict the statements of Innotech and its agents, nor established any reason to believe that the blanket certification was not in Customs' possession at the time of entry of the aircraft engine that is the subject of this dispute. The statement of Innotech's customs broker sets forth uncontested facts demonstrating that Customs had Innotech's ATCA certification well before the entry of its aircraft engine. To quote this Court's predecessor, the Customs Court: "The testimony of [Mr. Weiss], a single competent and credible witness with experience in [the Customs' issues] herein involved, whose testimony is uncontradicted and unimpeached, is sufficient to overcome the presumption of correctness of [Customs'] classification." *S. Stern, Henry & Co. v. United States*, 64 Cust. Ct. 1, 5, 308 F. Supp. 712, 716, C.D. 3951 (1970) (citing *United States v. Gardel Industries*, 33 CCPA 118, 122, C.A. 325 (1946)). Thus, the Court dismisses Customs' argument that it did not have Innotech's ATCA certification at the time of entry.

Further, even if Customs did not have Innotech's certification at the time of entry, Customs could not bar Innotech from remedying that problem. Customs maintains that the language of Customs Regulation 10.183(c)(2) absolutely precludes an importer from receiving duty-free treatment for its goods if the importer fails to file or have on file the ATCA certification at the time of entry of its goods. Specifically, Customs relies on the final sentence of the regulation to establish this bar: "Failure to provide the certification at the time of filing the entry summary or to have an approved blanket certification on file with the district director where the entry summary is filed shall result in a dutiable entry." 19 C.F.R. § 10.183(c)(2) (1991).

This Court has previously encountered the cited language of this Customs regulation and, because that language had been promulgated in violation of the Administrative Procedure Act, declared it invalid. *Gulf-*

stream Aerospace Corp. v. United States, No. 97–137, 21 CIT ____, ____ F. Supp. ____ (CIT Sept. 19, 1997) *("Gulfstream"); Aviall of Texas, Inc. v. United States*, 18 CIT 727, 861 F. Supp. 100 (1994) *("Aviall"), aff'd, Aviall of Texas, Inc. v. United States*, 14 Fed. Cir. (T) ____, 70 F.3d 1248 (1995). This Court has found that while the first part of Customs Regulation 10.183(c)(2) is valid and requires the ATCA certification to be presented at time of entry, failure to do so will not automatically preclude an importer from receiving the privilege of ATCA duty-free treatment. *Gulfstream*, No. 97–137 at 20–21. An importer can receive ATCA duty-free treatment by establishing that its failure to file an ATCA certification at the time of entry was due to a mistake of fact, clerical error or other inadvertence under 19 U.S.C. § 1520(c)(1), or by meeting the criteria for late filing of duty-free entry documentation under 19 C.F.R. § 10.112. *Id.* at 20–29; *Aviall*, 18 CIT at 732–35, 861 F. Supp. at 105–07. Although even a cursory examination of Innotech's situation reveals that it would be eligible for relief under both provisions, the Court does not reach the question of whether Innotech qualifies for that relief. The Court finds that, based on the Innotech affidavits and interrogatory responses, the requirement in 19 C.F.R. § 10.183(c)(2) that the importer submit the ATCA certification at the time of entry has been satisfied.

This brings the issue of this case into greater clarity. The issue is not whether Customs had possession of Innotech's ATCA certification at time of entry, but whether Customs had a *legally sufficient* ATCA certification at time of entry. Customs' denial of Innotech's protest solely on the basis of not having possession of Innotech's ATCA certification was wrongful. Customs now argues that the ATCA certification submitted by Innotech does not comply with the requirements for a valid and legally sufficient ATCA certification, and therefore could not grant Innotech's duty-free classification. This argument is also without merit. The Court finds that the certification is sufficient and should have been approved, and the aircraft engine must be classified and entered duty-free.

For an ATCA certification to be valid, it must comply with the requirements set forth in General Note 3(c)(iv), Harmonized Tariff Schedule of the United States ("HTSUS") (19 U.S.C. § 1202 (1988)). This provision states:

> *Articles Eligible for Duty-Free Treatment Pursuant to the Agreement on Trade in Civil Aircraft.* Whenever a product is entered under a provision for which the rate of duty "Free (C)" appears in the "Special" subcolumn, the importer shall file a written statement, accompanied by such supporting documentation as the Secretary of the Treasury may require, with the appropriate customs officer stating that the imported article has been imported for use in civil aircraft, that it will be so used and that the article has been approved for such use by the Administrator of the Federal Aviation Authority (FAA) or by the airworthiness authority in the country of exportation, if such approval is recognized by the FAA as an acceptable substitute for FAA certification, or that an application for approval for such use has been submitted to, and accepted by, the

> Administrator of the FAA. For purposes of the tariff schedule, the term *"civil aircraft"* means all aircraft other than aircraft purchased for use by the Department of Defense or the United States Coast Guard.

General Note 3(c)(iv), HTSUS (1991).[2] The certification must also comply with Customs Regulation 10.183, which was promulgated to implement General Note 3(c)(iv). The regulation sets forth the "written statement" required by General Note 3(c)(iv) in the form of an ATCA certification to support the claim for duty-free entry. The certification is described in the regulation as follows:

> *Blanket certification.* The certification may be in the form of a blanket certification which shall be valid for a period of one year from the date of approval by the district director in the district where the civil aircraft parts will be entered. The blanket certification may be renewed for additional one-year periods upon written request to each concerned district director. If a blanket certification is used it shall be in substantially the following form.
>
> BLANKET CERTIFICATION FOR CIVIL AIRCRAFT PARTS
>
> I, _____
> Importer's name, address, IRS number
>
> certify that the use by me or my authorized agent on an entry summary, or other entry documentation, of a HTSUS subheading number for civil aircraft parts, the subheading number description of which requires certification for use in civil aircraft, means that the articles identified on the entry summary or entry documentation are imported for use in civil aircraft within the meaning of Chapter 88, HTSUS, and section 10.183, Customs Regulations (19 CFR [*sic*] 10.183), that the articles will be so used and that the articles have been approved for such use by the Administrator of the Federal Aviation Administration (FAA) or by the airworthiness authority in the country of exportation, if such approval is recognized by the FAA as an acceptable substitute for FAA certification, or that an application for approval for such use has been submitted to, and accepted by, the Administrator of the FAA.
>
> I agree (1) that documentation will be maintained to support the above certification, and (2) to inform the district director of any change which would affect the validity of this certification.
>
> I understand that this certification will be valid for a period of one year from the date of approval by the district director and will cover entries made only in the district where filed.
>
> Signature _____
> Title _____

19 C.F.R. § 10.183(d)(2) (1991). Based on General Note 3(c)(iv) and this regulation, there are three elements that comprise a valid ATCA certification: (1) that the imported article has been imported for use in civil aircraft; (2) that it will be so used and that the importer will notify Cus-

[2] The current version of this provision, unamended, is found at General Note 6, HTSUS (1996).

toms of any diversion of the article to non-approved use; and (3) that the article has been approved or certified, or submitted for approval, for use in civil aircraft by the Federal Aviation Authority ("FAA") or by the airworthiness authority in the country of exportation if deemed an acceptable FAA substitute. Customs contends that Innotech's certification omits the third element. Specifically, Customs argues that Innotech's certification did not state that its aircraft engine had FAA approval, and that in the absence of this statement, the certification is invalid.

Innotech argues that its certification is valid because, as required by Customs' own regulation, it is in "substantially" the form set forth by Customs and plainly states that all goods to be entered under the blanket certification are certified for use in civil aircraft. The certification which Innotech submitted is on company letterhead, includes the full address of the company and the name and title of the declarant, and reads:

> CIVIL AIRCRAFT AGREEMENT BLANKET DECLARATION
>
> I, Peggy Hayes, declare that my assignment of a TSUS item description which contains the description "certified for use in civil aircraft", [*sic*] as defined in Section 601 of P.L. 96–39 means that the importer and/or manufacturer and/or end user of the imported article intends to use such imported article in civil aircraft in accordance with the provisions set forth in Section 601(A). I further declare such documentation as is required by generally accepted accounting procedures that can produce an audit trail supporting entry statements will be maintained and that any diversion from the intended use will be maintained and that any diversion from the intended use will be reported. As appropriate, [*sic*] and any duties due as a result of the diversion will be tendered concurrently.
>
> This declaration covers all entries made by Innotech Aviation Limited, Montreal International Airport, Dorval Quebec H4Y 1A6 or their authorized agent and precludes the necessity of a required statement on each entry summary.
>
> I agree to inform the Customs officials with whom this declaration is filed of any change that affect [*sic*] the truth of this declaration.
>
> [The signature, title and date follow.]

Def.'s Br. Supp. Def.'s Mot. Summ. J. at Ex. 1; Pl.'s Proposed Findings of Uncontroverted Facts at Ex. D. The Court agrees with Innotech that this declaration sets forth a legally sufficient ATCA blanket certification.

First, Innotech's certification explicitly references the ATCA and the requirements it must meet to obtain the privilege of duty-free entry. The certification states that whenever Innotech enters merchandise under the claimed duty-free ATCA classifications, that merchandise will be of a kind "'certified for use in civil aircraft' as defined in Section 601 of P.L. 96–39" and that the merchandise will be used "in accordance with provisions set forth in" that section. The referenced section is to Title VI of the Trade Agreements Act of 1979, Section 601 of Pub. L. 96–39 (1979),

which sets forth precisely the definitions and requirements found under General Note 3(c)(iv). Innotech demonstrates an understanding of its duties and obligations under the ATCA, for example, to maintain records of the use of its aircraft parts and notify Customs of any diversion from use in civil aircraft. The Court finds Innotech's certification to be an unequivocal invocation of the ATCA and of the right to the privileges thereunder.

Second, Customs' own regulations do not require more than this. 19 C.F.R. § 10.183(d)(2) states that the ATCA certification should be in "substantially the following form" and gives the example quoted above. The regulation does not require a verbatim recitation of that example. Innotech's certification clearly identifies the party requesting blanket certification, the fact that all merchandise will be certified for use in civil aircraft, and the intention to use all merchandise under that certification in civil aircraft and to abide by all the requirements of the ATCA and General Note 3(c)(iv). Significantly, the regulation does not require more than a *statement* of this intention: "Proof of end use of the civil aircraft [parts] * * * need not be furnished." 19 C.F.R. § 10.183(c)(1) (1991). The regulation does not require the civil aircraft parts to have actual airworthiness approval at the time of entry: the parts may either be approved by the FAA or by an acceptable authority in the country of exportation[3] at the time of entry, but the parts may also be simply submitted to and received by the FAA, awaiting approval at time of entry. General Note 3(c)(iv), HTSUS; 19 C.F.R. § 10.183(d)(2) (1991). Customs admits that its own practice is to accept entry documentation at the time of entry, and conduct a verification review, if any, after entry. Def.'s Resp. Pl.'s Mot. Summ. J. at 9. Thus, the Court finds that the intent of General Note 3(c)(iv) and implementing regulation is not to verify at the time of entry whether the parts are in fact certified for use in civil aircraft. If that were the only question, then Innotech would prevail without argument; there is no dispute in this case that, as Innotech states in its certification and repeats in its protest without contest, the aircraft engine in this case is airworthy and has been verified as such. The Court finds that the regulation requires the importer to attest to the fact that its merchandise is certified for use in civil aircraft, and that Innotech's certification satisfies this requirement.

Third, if Innotech's explicit reference to Section 601 of P.L. 96–39 was insufficient to demonstrate that any merchandise entered under its blanket certification would be certified for use in civil aircraft, then Customs should have made further inquiry of Innotech. "Customs Import Specialists, who verify the importer's asserted [ATCA] classifications in the entry processing stage, are in the best position to determine whether additional evidence to support a[n ATCA] certification should be requested from an importer." HQ 952029 (Jan. 1, 1995). The Court agrees

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[3] Innotech's airworthiness authority is the Department of Transport of Canada, an acceptable substitute for the FAA pursuant to the United States— Canada Bilateral Airworthiness Agreements and Arrangements, T.I.A.S. No. 11023, 1984 WL 161855 (1984).

with Innotech that Customs is compelled by its own regulations to review all entry documentation for accuracy and compliance and must identify any errors and return entry documents to an importer for correction. 19 C.F.R. § 141.64 (1991); *see also Aviall*, 18 CIT at 735, 861 F. Supp. at 107. Thus Customs, if uncertain as to whether Innotech actually had FAA or Canadian airworthiness approval even though actual approval is not required by General Note 3(c)(iv) or Customs Regulation 10.183, should have contacted Innotech with that inquiry. As the Court has found, Innotech's certification was clearly in Customs' possession well in advance—two months—of the entry of the aircraft engine, presenting Customs with more than ample time to determine its unnecessary merit.

The Court finds Innotech's ATCA certification was timely presented and is in substantially the form required by Customs' regulations. The certification properly attests that all merchandise to be entered under the blanket certification is certified for use in civil aircraft in accordance with the ATCA and General Note 3(c)(iv) and is legally sufficient. The Court concludes that Innotech's protest should have been granted, and Customs shall re-liquidate the aircraft engine in this case under the duty-free "C" classification.

CONCLUSION

For the foregoing reasons, defendant's motion for summary judgment is denied and plaintiff's motion for summary judgment is granted.

(Slip Op. 97–176)

FLORAL TRADE COUNCIL, PLAINTIFF *v.* UNITED STATES, DEFENDANT, AND GOVERNMENT OF COLOMBIA, AND ASOCIACION COLOMBIANA DE EXPORTADORES DE FLORES, DEFENDANT-INTERVENORS

Court No. 96–09–02281

[ITA final results terminating suspended countervailing duty investigations sustained.]

(Dated December 18, 1997)

Stewart and Stewart (Terence P. Stewart, James R. Cannon, Jr., Amy S. Dwyer, and *Mara M. Burr)* for plaintiff.

Frank W. Hunger, Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, United States Department of Justice *(John K. Lapiana)* for defendant.

Arnold & Porter (Michael T. Shor) for defendant-intervenors.

OPINION

RESTANI, *Judge:* Floral Trade Council ("FTC") appeals from the final results of the consolidated calendar year 1994 administrative reviews of

two suspended countervailing duty investigations covering (1) roses and other cut flowers from Colombia, and (2) miniature carnations from Colombia. A single Federal Register notice was published by the United States Department of Commerce, International Trade Administration ("ITA"). *See Roses and Other Cut Flowers from Colombia; Miniature Carnations from Colombia*, 61 Fed. Reg. 45,941, 45,941 (Dep't Commerce 1996) (final results of admin. rev.) [hereinafter *"Final Results"*]. In the *Final Results*, ITA terminated both suspended investigations after concluding (i) that no countervailable benefits had been provided for a period of at least five years, and (ii) that it is likely that Colombian producers and exporters of flowers will not receive any net subsidy in the future. *Id.* ITA defends the *Final Results*. The Government of Colombia ("GOC") and Asociacion Colombiana de Exportadores de Flores ("Asocolflores"), an organization of Colombian flowers exporters and importers, and various of its members, have intervened in support of the *Final Results*.

While all past agency determinations related to this case are governed by the prior statute, the administrative review covering the period of review ("POR") from January 1, 1994 to December 31, 1994 was initiated after January 1, 1995 and is therefore governed by the statute as amended by the Uruguay Round Agreements Act.[1] Under the current statute, ITA is authorized to suspend a countervailing duty investigation if:

> exporters who account for substantially all of the imports of the subject merchandise agree—
>
> (1) to eliminate the countervailable subsidy completely or to offset completely the amount of the net countervailable subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended * * *.

19 U.S.C. § 1671c(b)(1) (1994).

ITA's regulations also provide for the termination of suspended investigations under certain circumstances. Specifically, ITA's regulations provide that it may terminate a suspended investigation if it concludes that:

> (i) All producers and exporters covered at the time of revocation by the order or the suspension agreement have not applied for or received any net subsidy on the merchandise for a period of at least five consecutive years; and

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[1] The amendments to the countervailing and antidumping law by the Uruguay Round Agreement Act shall take effect on and apply to:

(a) In General.—

* * * * * * *

(2) reviews initiated under section 751 [19 U.S.C. § 1675] of such Act—

(A) by the administering authority or the Commission on their own initiative after such date, or

(B) pursuant to a request filed after such date,

* * * * * * *

(b) Date Described.—The date described in this subsection is the date on which the WTO Agreement * * * enters into force with respect to the United States [January 1, 1995].

19 U.S.C. § 1671 (1994)(note); *see also* Pub. L. 103-465, section 291.

(ii) It is not likely that those persons will in the future apply for or receive any net subsidy on the merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs.

19 C.F.R. § 355.25(a)(2)(i)–(ii) (1995).

FACTS

A. *Background:*

On August 6, 1982, U.S. producers of fresh cut flowers other than miniature carnations filed a petition seeking a countervailing duty investigation of Colombian producers and exporters of fresh cut flowers other than miniature carnations. *See Roses and Other Cut Flowers from Colombia*, 47 Fed. Reg. 50,314, 50,314 (Dep't Commerce 1982) (prelim. determ.). In a preliminary determination issued on November 5, 1982, ITA found that Colombian producers received countervailing benefits under one program— the Tax Reimbursement Certificate Program, an export reimbursement program, then known as the CAT program. *Id.* at 50,315.

On January 18, 1983, ITA entered into a suspension agreement with individual Colombian producers and exporters of roses and other fresh cut flowers, excluding miniature carnations, which producers and exporters comprised over 85% of total exports of subject flowers to the United States. *Roses and Other Cut Flowers from Colombia*, 48 Fed. Reg. 2158, 2161 (Dep't Commerce 1983) (suspension of investigation) [hereinafter *"Roses Agreement"]*. The producers and exporters agreed not to "apply for or receive any benefits that the Department has determined or determines to be countervailable under the Tax Reimbursement Certificate Program (CAT) with respect to exports of the subject product entering the United States." *Id.* (¶ B.a). The exporters also agreed not to "apply for or receive benefits under any other program subsequently determined by the Department in this or any subsequent proceeding concerning other merchandise from Colombia to constitute bounties or grants under the Act." *Id.* (¶ B.b).

Following a later countervailing duty investigation concerning certain textile mill products and apparel from Colombia, in which ITA found other Colombian government programs to constitute bounties or grants, ITA and Colombian exporters, on December 15, 1986, entered into a revised suspension agreement. *Roses and Other Cut Flowers from Colombia*, 51 Fed. Reg. 44,930, 44,932 (Dep't Commerce 1986) (final results of admin. rev. and revised suspension agmt.) [hereinafter "*Revised Roses Agreement"].*

The revised agreement provides in pertinent part the following. First, the signatories reaffirmed their agreement not to apply for or receive benefits under the CAT program, known now as the CERT program. *Id.* (¶ II.a).

Second, the producers agreed not to apply for or receive any short-term or long-term export loans provided by the Colombian Government Export Promotion Fund ("PROEXPO") "other than those offered on

non-preferential terms at or above the most recent long-term [short-term] benchmark interest rate determined by the Department in this proceeding." *Id.* at 44,933 (¶¶ II.c & b). Unlike the CAT/CERT program and other programs included in the revised agreement which the signatories agreed to renounce entirely, the signatories did not agree to refuse Colombian government loans. Instead, the signatories agreed to have ITA periodically set benchmark interest rates, and to ensure that PROEXPO loans, when issued, were at rates at or above the benchmark rates then in effect.[2] *Id.* The initial benchmark interest rates were set at 22.5% for short-term loans and 21% for long-term loans. *Revised Roses Agreement*, 51 Fed. Reg. at 44,932. These rates were based not on commercial bank interest rates, but rather, constituted the average interest rates then available under non-targeted governmental financing programs for the Colombian agricultural sector as a whole. *See id.* at 44,931–32.

On June 17, 1986, at the request of the FTC, ITA initiated an independent countervailing duty investigation into miniature carnations from Colombia. *Miniature Carnations from Colombia*, 51 Fed. Reg. 21,960, 21,960 (Dep't Commerce 1986) (initiation). ITA issued a preliminary determination on October 27, 1986, finding subsidies in the amount of 1.09% *ad valorem* under the PROEXPO loan program and one other program. *See Miniature Carnations from Colombia*, 51 Fed. Reg. 37,934, 37,934 (Dep't Commerce 1986) (prel. determ.). No subsidies were found under the CERT program, as the GOC had set the rebate rate applicable to all flower exports to the United States to zero on October 29, 1985. *Id.* at 37,935.

On January 13, 1987, ITA entered into a suspension agreement with Colombian producers and exporters of miniature carnations from Colombia. *See Miniature Carnations from Colombia*, 52 Fed. Reg. 1353, 1354 (Dep't Commerce 1987) (suspension of invest.) [hereinafter *"Carnations Agreement"*]. The terms of the *Carnations Agreement* were virtually identical to those of the *Revised Roses Agreement*. The only material difference relevant here is that the *Carnations Agreement* contains a cross-reference to the *Revised Roses Agreement* with respect to benchmark interest rates under the PROEXPO loan program. *Id.* at 1355. Specifically, the *Carnations Agreement* provides that signatories will not receive PROEXPO loans "other than those offered at non-preferential terms and at or above the most recent short-term [long-term] benchmark interest rate determined by the Department in this proceeding or the countervailing duty proceeding on roses and other cut flowers from Colombia." *Id.* (¶¶ II.B & C).

Pursuant to its regulations, ITA conducted annual reviews of the suspension agreements whenever requested to do so by an interested party and consistently found that the signatories complied with all obligations

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[2] The agreement also contained an obligation for producers to refinance all preexisting loans at or above the new benchmark interest rates. *Id.* (¶¶ II.b & c).

under both agreements.[3] Furthermore, the only program covered by the suspension agreements that was not abolished for flower growers was the PROEXPO loan program.[4] *See, e.g., 1988–90 Carnations Review*, 59 Fed. Reg. at 10,791. The GOC took various steps to further compliance.

For example, in December 1987, PROEXPO modified its loan program. Instead of providing loans at fixed rates of interest, PROEXPO begin issuing only variable rate loans tied to the market rate for 90-day certificates of deposit—the "DTF rate"[5]—on the date a loan was issued. *See Roses and Other Cut Flowers from Colombia*, 54 Fed. Reg. 51,052, 51,052–03 (Dep't Commerce 1989) (prel. results); *Miniature Carnations from Colombia*, 54 Fed. Reg. 51,050, 51,050 (Dep't Commerce 1989) (prel. results).

In the administrative reviews covering 1987, FTC made no request that ITA modify its benchmark interest rates. *See 1987 Carnations Review*, 55 Fed. Reg. at 5042; *1986–87 Roses Review*, 55 Fed. Reg. at 5043. During 1988, the benchmarks thus remained at 21% and 22.5% for long-term and short-term loans, respectively. The actual rates for PROEXPO loans to flower growers, however, were higher. For short-term loans, flower growers received loans at the higher of 22.5% or the DTF rate. *Miniature Carnations from Colombia*, 55 Fed. Reg. 33,341, 33,342 (Dep't Commerce 1990) (prelim. results); *Roses and Other Cut Flowers from Colombia*, 55 Fed. Reg. 33,343, 33,344 (Dep't Commerce 1990) (prelim. results). ITA found that the DTF rate during 1988 averaged 28.4%. *1988 Carnations Review*, 55 Fed. Reg. at 53,583; *1988 Roses Review*, 55 Fed. Reg. at 53,585. With respect to long-term loans, flower growers were eligible to receive loans at the higher of 25% or the DTF rate. *1988 Roses Review*, 55 Fed. Reg. at 53,583; *1988 Carnations Review*, 55 Fed. Reg. at 53,584. FTC did not object to ITA's finding that no net subsidy had been conferred in 1988, nor did it request that ITA change the benchmark interest rates.

For calendar year 1989, FTC requested a review only of the *Carnations Agreement*. Loans to flower growers were still provided at the higher of 22.5% or the DTF rate for short-term loans, and 25.0% or the DTF rate for long-term loans. *1989 Carnations Review*, 56 Fed. Reg. at 14,240; *Miniature Carnations from Colombia*, 55 Fed. Reg. at 50,246. Because the DTF rate averaged 27.9% in 1989, ITA determined that the

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[3] *See, e.g., Roses and Other Cut Flowers from Colombia; Miniature Carnations from Colombia*, 61 Fed. Reg. 9429 (Dep't Commerce 1996) [hereinafter "*1993 Final Results*"]; *Roses and Other Cut Flowers from Colombia; Miniature Carnations from Colombia*, 60 Fed. Reg. 42,539 (Dep't Commerce 1995) [hereinafter "*1991–92 Final Results*"]; *Roses and Other Cut Flowers from Colombia*, 59 Fed. Reg. 10,796 (Dep't Commerce 1994) [hereinafter "*1988–90 Roses Review*"]; *Miniature Carnations from Colombia*; 59 Fed. Reg. 10,790 (Dep't Commerce 1994) [hereinafter "*1988–90 Carnations Review*"]; *Miniature Carnations from Colombia*, 56 Fed. Reg. 14,240 (Dep't Commerce 1991) [hereinafter "*1989 Carnations Review*"]; *Miniature Carnations from Colombia*, 55 Fed. Reg. 53,583 (Dep't Commerce 1990) [hereinafter "*1988 Carnations Review*"]; *Roses and Other Cut Flowers from Colombia*, 55 Fed. Reg. 53,584 (Dep't Commerce 1990) [hereinafter "*1988 Roses Review*"]; *Roses and Other Cut Flowers from Colombia*, 55 Fed. Reg. 5042 (Dep't Commerce 1990) [hereinafter "*1986–87 Roses Review*"]; *Miniature Carnations from Colombia*, 55 Fed. Reg. 5042 (Dep't Commerce 1990) [hereinafter "*1987 Carnations Review*"].

[4] The PROEXPO program was not abolished because signatories had not agreed to renounce loans, only to renounce loans on preferential terms or at rates below ITA benchmarks. *See id.* at 10,794–95. ITA, however, expressly determined that the CERT program had been abolished for flower exports to the United States. *See, e.g., 1988–90 Carnations Review*, 59 Fed. Reg. at 10,792.

[5] The DTF functions like the U.S. prime rate, and is used by banks in setting loan rates.

signatories had fully complied with their obligations, and that no net subsidy was conferred. *Miniature Carnations from Colombia*, 55 Fed. Reg. at 50,346.

Moreover, ITA determined that the preexisting benchmarks were no longer appropriate because interest rates for the alternative sources of financing ITA used to compute the benchmark rates had changed. *1989 Carnations Review*, 56 Fed. Reg. at 14,240. Thus, effective April 8, 1991, ITA changed the benchmark interest rate to DTF plus 1 percentage point for short-term loans, and DTF plus 1 plus 0.25 percentage points for each additional year after the first year, for long-term loans. *Id.* ITA expressly stated that the new rates "will apply to loans granted after the date of publication of this notice." *Id.* FTC filed no comment with ITA on any issue in the review, nor did it appeal from any aspect of the determination.

Because the *Revised Roses Agreement* did not contain a cross-benchmark clause similar to that contained in the *Carnations Agreement*, the new benchmarks established under the miniature carnations agreement did not apply under the roses agreement. Nonetheless, it appears the GOC applied the new benchmark rates for *all* flower growers. *See Asociacion Colombiana de Exportadores de Flores v. United States*, Slip Op. 95–59, at 8–9, 1995 WL 170396, at *4 (Ct. Int'l Trade 1995) [hereinafter "*Asocolflores*"].

B. *1990 Review Period:*

In the 1990 administrative reviews, the GOC requested termination of the two suspension agreements. *1989–90 Carnations Review*, 59 Fed. Reg. at 10,790 (including comments on issues relating to both the roses and carnations reviews); *1988–90 Roses Review*, 59 Fed. Reg. at 10,796 (limited to case specific comments). Pursuant to ITA's regulations, the government of a foreign country may request termination of a suspended investigation if, *inter alia*, it can demonstrate that it has abolished all programs previously found to be countervailable for a minimum of three years. 19 C.F.R. § 355.25(b)(1) (1995). ITA found that the CERT program had been abolished for subject merchandise for at least three years. *1988–90 Carnations Review*, 59 Fed. Reg. at 10,791. But, with respect to the PROEXPO loan program, although ITA found that for a three year period the program did not confer any countervailable benefits, it determined that "the program has not been abolished." *Id.* Instead, ITA determined that "the above scenario characterizes nonuse of the program." *Miniature Carnations from Colombia*, 58 Fed. Reg. at 52,278; *Roses and Other Cut Flowers from Colombia*, 58 Fed. Reg. at 52,273.

In the 1990 review, FTC argued that ITA should not evaluate the PROEXPO loan program using the benchmark interest rates provided for in the suspension agreements. *1988–90 Carnations Review*, 59 Fed. Reg. at 10,794. Instead, FTC argued that ITA should use the annual average interest rates for commercial loans during the POR. *Id.* ITA reaffirmed its conclusion from the 1989 miniature carnations review that

suspension agreements are prospective and that the interest rate benchmarks contemplated by the agreements "cannot [be] reset * * * in the middle of an administrative review * * *. Since suspension agreements are forward looking, the terms and conditions should not be retroactively changed during the POR." *1988–90 Carnations Review*, 59 Fed. Reg. at 10,795. ITA confirmed that "because all PROEXPO loans were above the benchmark rates, * * * the GOC did not confer any countervailable benefits through the PROEXPO program during the POR." *Id.* FTC did not, however, request any prospective changes in the benchmark rates, and none were made.

The GOC appealed ITA's determination not to terminate the suspended investigations, but this court affirmed ITA's decision in *Asocolflores*, Slip Op. 95–59, at 13, 1995 WL 170396, at *5. In its decision, the court stated that "[d]uring the period of review, the interest rates on all PROEXPO loans to flower growers and exporters were significantly higher than required under the agreements." *Id.* at 9, 1995 WL 170396, at *4. The court also noted that the GOC had amended the PROEXPO governing resolutions applying the suspension agreements' minimum rates to all flower growers. *Id.* But, the court found that it was not clear whether the floor loan rate would float with the rate provided in the suspension agreements as updated, "in which case no subsidies could be given under the program." *Id.* The court did not need to resolve this issue, however, because it upheld ITA on the basis that a program not relevant here was not abolished in time to qualify for termination under the relevant regulation. *Id.*

C. *1991 and 1992 Review Periods:*

ITA conducted administrative reviews of both agreements for the 1991 and 1992 time periods, which reviews it consolidated. *1991–92 Final Results*, 60 Fed. Reg. at 42,539. By this time, PROEXPO had been converted into a government-owned bank called BANCOLDEX. *Id.* at 42,543. ITA verified that all signatories had complied with the terms of the suspension agreements by receiving only non-preferential loans at or above the applicable benchmark interest rates. *Id.* at 42,545. In addition, ITA found that BANCOLDEX had begun issuing loans in dollars. *Id.* at 42,543. ITA therefore established benchmark interest rates for such dollar loans, even though it never found the program to confer a countervailable subsidy. *Id.* In any event, it appears the benchmark rate established was lower than the rate then in effect for BANCOLDEX dollar loans. *See id.* at 42,544; *Roses and Other Cut Flowers from Colombia; Miniature Carnations from Colombia*, 59 Fed. Reg. at 52,515.

FTC contested several aspects of ITA's preliminary determination. First, FTC contested ITA's finding that the signatories had complied with their obligation to renounce the CAT/CERT program. *1991–92 Final Results*, 60 Fed. Reg. at 42,540. Relying upon a disclosure by the GOC that it had in 1992 eliminated the CERT program for all exports to Panama and the Netherlands Antilles due to instances of fraud in claiming such rebates in non-flower programs, FTC claimed ITA could not be

sure that no CERT rebates were received by flower growers for exports to the United States. *Id.* ITA rejected FTC's arguments as unsupported by any record evidence. *Id.* at 42,541. It noted that CERT payments had been set to zero for exports of flowers to the United States. *Id.* It further noted that ITA "fully verified the non-receipt of CERT payments on exports of the subject merchandise by reviewing the Central Bank's CERT printouts by destination." *Id.* at 42,539, 42,541. Further, ITA verified exports of subject flowers to Panama and the Netherlands Antilles to ensure that *bona fide* exports occurred. *Id.* ITA concluded that the GOC and the flower growers/exporters were in compliance with the suspension agreements during the PORs. *Id.*

Second, FTC again objected to ITA's use of the benchmark interest rates provided for in the agreements. *Id.* at 42,541. Once again, FTC requested that ITA calculate a "current" benchmark interest rate for the POR, and evaluate individual loans against that rate. *Id.* For the same reasons as in prior reviews, ITA again rejected this approach as inconsistent with the terms of the suspension agreements, and unworkable in the context of suspension agreements generally. *Id.* FTC did not appeal this final determination.

ITA, however, adjusted the benchmark interest rates for Colombian peso loans as a result of the review, to account for changes in the agricultural lending rates. *See id.* at 42,542. The new rates, effective as of August 30, 1995, were DTF plus 3.66 percentage points for short-term loans and DTF plus 3.66 percentage points, plus an additional 0.25 percentage point for each year after the first, for long-term loans. *Id.*

D. *1993 Review Period:*

Reviews were requested for both agreements for the 1993 period. Again ITA determined that the signatories had complied with all obligations under the suspension agreement, both with respect to BANCOLDEX loans and with respect to the CERT program, and had received no countervailable benefits. *1993 Final Results*, 61 Fed. Reg. at 9429. ITA modified the benchmark for long-term dollar loans, made no changes to the peso benchmarks, and expressly stated that "[l]oans provided at or above the benchmark will not be considered preferential." *Id.* at 9433.

FTC again asserted that ITA could not be certain no CERT rebates were paid with respect to flower exports to the United States. *Id.* at 9430. Again, ITA noted that it conducted a full verification of company and government records, and found no evidence of any CERT rebates for flowers exported to the United States. *Id.* Also, FTC raised its argument about the benchmark interest rates, which ITA again rejected for all the reasons it had stated in prior reviews. *Id.* at 9431–32.

Asocolflores appealed from the *1993 Final Results*, which contained a statement by ITA suggesting that all preexisting dollar loans issued in conformity with the agreements would have to be refinanced at new

rates.[6] *Id.* at 9432. ITA agreed that the language to which Asocolflores objected was wrong and had been inadvertently included, and requested a voluntary remand to correct the final results. The court remanded, and ITA ruled that "[t]here is no requirement in the suspension agreements for respondents to refinance loans which the Department has found, in previous review periods, to be in compliance with the benchmarks in effect at the time of issuance of the loans." *Results Regarding Asociacion Colombiana de Exportadores de Flores v. United States, Court No. 95–08–01024, (July 15, 1996)*; GOC's App., Tab 5, at 1. The court affirmed ITA's remand determination without objection. *Asociacion Colombiana de Exportadores de Flores v. United States*, Ct. No. 95–04–01072 (Ct. Int'l Trade July 26, 1996) (final order); GOC's App., Tab 5.

E. *1994 Review Period:*

While the 1994 review was pending, the Colombian flower producers and exporters and BANCOLDEX agreed to establish a mechanism to ensure that no subsidies could be provided to flower growers through BANCOLDEX loans in the future. Letter from Asocolflores to BANCOLDEX of 11/3/95, GOC's App., Tab 6; Letter from BANCOLDEX to Asocolflores of 11/10/95, GOC's App., Tab 6 (appendix A to GOC November 13, 1995 submission). Accordingly, at the request of Asocolflores, BANCOLDEX agreed to monitor dollar and peso interest rates, and to adjust the BANCOLDEX floor rates to ensure that subsidies were not conferred. Letter from BANCOLDEX to Asocolflores, GOC's App., Tab 6. The GOC also certified that it would institute or maintain appropriate measures to ensure that export loan programs would be administered so as not to confer countervailable subsidies on flower growers. GOC Certification Regarding BANCOLDEX (Feb. 9, 1996), at 3, GOC's App., Tab 7. As ITA verified, on November 14, 1995, BANCOLDEX increased the floor rate on loans to flower growers from DTF + 3.66 to DTF + 3.86, to conform to changes in agricultural loan rates, and also adjusted the dollar floor to conform to changes in U.S. interest rates. Verification Report (Feb. 28, 1986), at 9–10, GOC's App., Tab 7; BANCOLDEX Verification Ex. 7, GOC's App., Tab 7.

Before the ITA, FTC challenged generally ITA's findings with respect to the CERT rebates for flowers shipped to Panama and the Netherlands Antilles. *Final Results*, 61 Fed. Reg. at 45,942. FTC reiterated its argument that ITA had not investigated thoroughly enough to be certain that flower exporters had not received rebates with respect to their exports to the United States through fraudulent transshipment. *Id.*

ITA responded that "[p]etitioner's allegation concerning the 1991–92 period was examined by the Department during that review, and the Department found no evidence to support an allegation of transshipment or reshipment of the subject merchandise." *Id.* ITA further noted that

[6] In the *1993 Final Results*, ITA added a heading, "Refinancing Outstanding Dollar and Peso Loans," and stated that respondents would have 90 days to repay or refinance any outstanding loans "to meet the new short and long-term dollar and peso benchmarks." *Id.* at 9434.

there is no evidence in the current POR of any problems with respect to the CERT program. *Id.* Accordingly, ITA did not commence an investigation in any third country in order to detect transshipment.

FTC also argued that ITA should not apply "outdated" benchmark interest rates to determine compliance with the suspension agreements. *Id.* at 45,944. FTC contended that to terminate the suspension agreements, ITA must compare BANCOLDEX interest rates to current interest rate benchmarks. *Id.* ITA once again noted that suspension agreements necessarily are forward looking, and that, under the terms of these agreements, ITA must set benchmark interest rates prospectively. *Id.*

Based upon its findings that all programs (except BANCOLDEX) had been abolished, that the signatories had complied with the agreement and received no subsidies for more than five years, and that it was unlikely flower growers would or could receive subsidies in the future, ITA terminated the suspended investigations on August 30, 1996. *Id.* at 45,941.

FTC now raises these two issues before the court. ITA and defendant-intervenors contend that the ITA's findings for the 1994 period of review are fully supported by the evidence and that the regulatory conditions for termination, which they allege are consistent with the statute, have been met.

DISCUSSION

The overriding issue in this case is whether ITA may rely on its findings of no subsidization under the suspension agreements for the four prior periods of review in determining that the first prong of the termination test, i.e., five years of no subsidization, has been met. *See* 19 C.F.R. § 355.25(a)(2)(i). This issue involves both the CERT program and the BANCOLDEX loan program. It also effects the second prong of the test, the likelihood of future subsidization. *See* 19 C.F.R. § 355.25(a)(2)(ii). Also at issue are the results of the fifth and last period of review.

A. *The CERT Program:*

ITA found as to the last period of review, 1994, that FTC presented no evidence of subsidization occurring under the CERT program. *Final Results*, 61 Fed. Reg. at 45,942. The GOC had certified that this program was abolished prior to the review period for all flowers exported to the United States, *id.*, and FTC does not appear to challenge seriously this finding. Also, while it may wish that ITA had conducted an investigation of fraud in the CERT program in 1994, there was no evidence relating to the 1994 period which would cause ITA to do so.

In prior years there was evidence of transshipment for some products which may or may not have included flowers. This caused the GOC in 1992 to terminate the CERT program for exports to Panama and the Netherlands Antilles. *1991–92 Final Results*, 60 Fed. Reg. at 42,540. Given its earlier verification, ITA found no basis for concluding that

there was fraud in the CERT program for flowers exported to the United States. *Final Results*, 61 Fed. Reg. at 45,942.

If the statute or regulations require ITA for purposes of termination of a suspended investigation to reexamine prior no subsidy years, despite the earlier, now final, findings that no subsidization occurred, remand would be required for this purpose because ITA did not undertake such a reexamination. The court, however, can find nothing in the statute or regulations which mandates this approach. Certainly, 19 C.F.R. § 355.25(a)(2)(i) does not state that ITA cannot rely on the results of prior reviews which have become final for all other purposes, and nothing in 19 U.S.C. § 1675 dictates such a result. If ITA was remiss in not investigating adequately the CERT program for fraud via transshipment through Panama and the Netherlands Antilles prior to the 1994 review, FTC should have pursued its administrative remedies and judicial review, if necessitated, at those times. The law does not mandate reexamination after the prior reviews have become final.

As to the *1994* review, which is now before the court, ITA was not required to investigate fraud in those aspects of the CERT program which were abolished in *1992*, i.e., shipments to the Netherlands Antilles and Panama. Further, there is simply nothing to support FTC's request for an investigation of any other country.[7] Accordingly, ITA's finding of no subsidization in the 1994 review period as to the CERT program, is sustained.

As there were at least five years of findings of no subsidization, the CERT program was abolished for exports of flowers to the United States, and there was no viable evidence of likelihood of future use of the program for flower exports to the United States, ITA properly found that as to the CERT program the requirements for termination of the suspended investigations were met.

B. *BANCOLDEX Loan Program:*

ITA evaluated the BANCOLDEX peso loan program under the subsidy criteria contained in the suspension agreements.[8] *Final Results*, 61 Fed. Reg. at 44,944. As indicated, the actual loan rates for 1994 were above those required by the suspension agreements. *Id.* FTC's argument is that compliance with the applicable suspension agreements is insufficient and that under 19 U.S.C. § 1675(c) and 19 C.F.R. § 355.25(a)(2)(i), ITA must find that no subsidization has occurred for five years, apart from the subsidy standard or benchmark contained in the suspension agreements.[9] Thus, FTC argues the actual loan rates must be compared to current commercial rates or rates which were otherwise generally available to the exporters.

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[7] After considerable prompting at oral argument, FTC offered Ecuador as a possible country of transshipment because it has substantial exports of flowers to the United States, but FTC cannot explain why the low CERT flower benefits would not be offset by the extra air freight. Of course, there are no specific allegations as to Ecuador.

[8] The dollar loan program is not at issue.

[9] FTC does not argue that the benchmarks were not supported by substantial evidence when established.

This court never before has been presented with the issue of whether compliance with a suspension agreement which defines "no subsidization" is in fact "no subsidization" for purposes of the countervailing duty law in general and 19 C.F.R. § 355.25(a)(2)(ii) in particular. The purpose of suspension agreements, however, is to achieve a state of zero subsidization. They do this in the case of loan programs by establishing a benchmark which is based on an agreed upon floor rate to be applied thereafter. *See Asocolflores*, Slip Op. 95–59, at 8, 1995 WL 170396, at *4. The parties, of course, may seek amendments to the agreements if they do not achieve a reasonable standard for judging no subsidization. FTC offered ITA no reasonable alternative to prospectively applicable benchmarks for establishment of criteria in suspension agreements. Suspension agreements are inherently forward looking. *See, e.g.*, *Certain Tool Steel Products from Brazil*, 51 Fed. Reg. 45,376, 45,379 (Dep't Commerce 1986) (final results and renegotiation of suspension agmt.)(CVD investigation suspended under export tax subject to prospective adjustment based on past subsidy rate); *Certain Stainless Steel Products from Japan*, 51 Fed. Reg. 45,371, 45,375 (Dep't Commerce 1986) (final results and renegotiation of suspension agmt.)(same). Thus, it is obvious that ITA has acted reasonably and within its discretion in defining zero subsidization prospectively for the purpose of the agreements themselves.[10]

The next issue is whether the yearly findings of no subsidization under the suspension agreements must be revisited in the context of termination of suspended investigations, so that respondents would be subjected up to five years later to a new retrospective standard for zero subsidization for purposes of the first prong of the termination test. FTC appears to concede that it lost the battle in previous years and that ITA's findings of compliance with the suspension agreements were, in essence, findings of no subsidization for those years, which are now final. If FTC does not so concede, the court would, nonetheless, find this to be the case. FTC, however, may seek to establish for the 1994 POR that the no subsidization finding was in error, even though the agreement was met. It argues that ITA should have investigated whether loans in the POR were actually at or below contemporaneously available commercial loan rates. ITA rejected this approach as unworkable in the suspension agreement context. Respondents also argues that it would be unfair to apply shifting standards to its conduct. Once again, the statute gives little guidance. The regulation and the past practice of ITA leave room for ITA's approach in this regard.

Even though benchmarks are applied retrospectively in non-suspension agreement administrative investigations and reviews, it does not follow that the suspension agreement standard must be abandoned for purposes of a termination regulation expressly applicable to suspension agreement cases. ITA's approach makes sense for practical assessment

[10] The court suggested at oral argument that because suspension agreements function prospectively, what FTC might have been asking for was a completely floating standard unrestricted by a numerical standard. FTC made it clear that it sought the "discipline" of a defined benchmark, which it then sought to set aside for purposes of judging compliance. The court fails to see how FTC can claim a floating standard and a defined standard at the same time.

of compliance and in terms of the policy of the statute of preventing subsidization. In terms of fulfillment of statutory purpose, any unusual fact situation which might give ITA pause as to the wisdom of termination because of subsidization revealed upon retrospective review could be handled through consideration of the likelihood of future subsidization. It does appear that the first prong of the regulatory test, 19 C.F.R. § 355.25(a)(2)(i), is meant to be somewhat rigid, while the second prong, 19 C.F.R. § 355.25(a)(2)(ii), which relates to future conduct, admits of broader discretion. In this case FTC's analysis of the loan data does not demonstrate the likelihood of subsidization from any perspective. Thus, ITA was not remiss in failing to apply FTC's retrospective benchmark analysis.

In terms of the practicalities of judging subsidization in this case, it should be noted that interest rates change. Here they were highly variable. At times the prospective aspects of suspension agreements may make such agreements more stringent for loan programs and, at other times, more lax. This is simply the result of the prospective nature of suspension agreements in general and the mutability of interest rates. Further, because the benchmark rates used in the most recent reviews, and to be used in the future, are themselves floating rates, the chances of distortion are minimal. Finally, it appears there was no subsidization even based on a retrospective analysis. That is, FTC could point to no record evidence of loans to flower exporters which were at more favorable rates than contemporaneous commercial or generally available loan rates. Thus, whether there is a case in which ITA might havempliance with the suspension agreements for five years is sufficient to satisfy 19 C.F.R. § 355.25(a)(2)(i), this is not such a case.

Accordingly, the court finds ITA properly concluded that no subsidization occurred in the BANCOLDEX program based on five years of findings of no subsidization under the suspension agreements and no evidence of likelihood of future subsidization.

CONCLUSION

The court sustains ITA's determination that there was no subsidization in 1994 under either the CERT or the BANCOLDEX programs. ITA's determination that the requirements for termination of the investigation of Colombian flowers based on five years of zero subsidization and no future likelihood of subsidization were met is also sustained.

(Slip Op. 97–177)

USINOR SACILOR, UNIMÉTAL, AND ASCOMÉTAL, PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND INLAND STEEL BAR CO., DEFENDANT-INTERVENOR

Consolidated Court No. 93–04–00230

[Sustaining the United States Department of Commerce, International Trade Administration, regarding a final countervailing duty determination.]

(Dated December 18, 1997)

Weil, Gotshal & Manges (M. Jean Anderson and *Gregory Husisian)* for Usinor Sacilor, Unimétal, and Ascométal, plaintiffs.

Frank W. Hunger, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Reginald T. Blades, Jr.);* Office of Chief Counsel for Import Administration, United States Department of Commerce *(Terrence J. McCartin)*, of counsel, for defendant.

Wiley, Rein & Fielding (Charles Owen Verrill, Jr., Alan H. Price, and *Peter S. Jordan)* for Inland Steel Bar Company, defendant-intervenor.

MEMORANDUM AND OPINION

GOLDBERG, *Judge:* This matter is before the Court after the United States Department of Commerce, International Trade Administration ("Commerce"), issued its final results of redetermination on July 28, 1997 *("Third Redetermination").*[1] Commerce issued the *Third Redetermination* pursuant to this Court's most recent remand decision, *Usinor Sacilor v. United States*, ___ CIT ___, 966 F. Supp. 1242 (1997) *("Usinor III").*

In *Usinor III*, this Court held that Commerce, in its *Second Redetermination*, dated March 25, 1997, failed to comply with the Court's instructions in *Usinor Sacilor v. United States*, ___ CIT ___, 955 F. Supp. 1481 (1997) *("Usinor II").* In *Usinor II*, this Court held that under 19 U.S.C. § 1671 (1988), Commerce must consider all economic evidence available in the administrative record to determine the portion of a firm's total production that will be used to calculate a countervailing duty rate; Commerce's decision to rely solely on evidence that the French government intended to aid French domestic production, and on evidence that the French government had sufficient control over Usinor Sacilor to effectuate its intent *(i.e.*, the "intent-plus-control" test), when other evidence on the economic effects of the subsidies was available on the record, was not based on a reasonable interpretation of the statute in light of congressional intent. ___ CIT at ___, 955 F. Supp. at 1488. Thus, the Court in *Usinor II* remanded and directed that Commerce examine all relevant evidence, including the likely effects of the subsidies on non-French production. *Id.*

In *Usinor III*, the Court concluded that Commerce failed to comply with this directive in the *Second Redetermination*. ___ CIT at ___, 966 F. Supp. at 1244. Specifically, the Court in *Usinor III* held the evidence on record could not support Commerce's factual finding that the use of

[1] A detailed factual review of the underlying administrative proceeding giving rise to this action is set out in *Usinor Sacilor v. United States*, 19 CIT ___, 893 F. Supp. 1112 (1995) *("Usinor I").*

subsidies was not effected by Usinor Sacilor's transfer of funds to its non-French production facilities. *Id.* Thus, in *Usinor III*, the Court remanded to Commerce a third time, instructing it to consider "all direct economic evidence on the likely effects of subsidies and to adjust the countervailing duty in light of this evidence." *Id.* at 1244–45.

Today, the Court reviews Commerce's *Third Redetermination*. On this occasion, Commerce's redetermination is sustained. The Court also takes this opportunity to address assertions made by both defendant, Commerce, and defendant-intervenor, Inland Steel Bar Company ("Inland"), that the Court unlawfully ordered Commerce to recalculate the countervailing duty rate. The Court exercises jurisdiction in this matter under 28 U.S.C. § 1581(c) (1988).

STANDARD OF REVIEW

When reviewing an agency's factual findings, the Court must uphold the agency if its findings are supported by substantial evidence. 19 U.S.C. § 1516a(b)(1)(B) (1988). "Substantial evidence is something more than a 'mere scintilla,' and must be enough reasonably to support a conclusion." *Ceramica Regiomenta, S.A. v. United States*, 10 CIT 399, 405, 636 F. Supp. 961, 966 (1986) (citations omitted), *aff'd*, 5 Fed. Cir. (T) 77, 810 F.2d 1137 (1987). In applying this standard, the Court affirms agency factual determinations that are reasonable and supported by the record when considered as a whole, even though there may be evidence that detracts from the agency's conclusions. *Atlantic Sugar, Ltd. v. United States*, 2 Fed. Cir. (T) 130, 138, 744 F.2d 1556, 1563 (1984). Yet, it is also an axiom of administrative law that "an agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n. of United States v. State Farm Mutual Auto. Ins. Comp.*, 463 U.S. 29, 43 (1983) (citation omitted). *See also Geneva Steel v. United States*, ____ CIT ____, ____, 914 F. Supp. 563, 615 (1996).

DISCUSSION

The Court is satisfied that Commerce, in the *Third Redetermination*, appropriately reviewed economic evidence on the effect of subsidies in addition to the "intent-plus-control" factors. Moreover, after giving the economic evidence due consideration, as directed in *Usinor III*, Commerce also correctly incorporated this evidence when it calculated the countervailing duty rate. All parties to this action agree that the *Third Redetermination* is consistent with the Court's remand instructions in *Usinor III*. *See Letter from M. Jean Anderson to the Hon. William M. Daley*, (July 21, 1997) (stating that the remand results are consistent with the Court's decision in *Usinor III*); *Def.'s Reply Cmts. on Final Results of Redetermination Pursuant to Ct. Order* at 2 *("Def.'s Reply Cmts.")* (same); *Def.-Int.'s Cmts. on Final Results of Redetermination Pursuant to Ct. Remand* at 2 *("Def.-Int.'s Cmts.")* (same). The Court therefore finds that Commerce has reviewed all the economic evidence

on the record, not simply the "intent-plus-control" factors, and, in doing so, has appropriately adjusted the countervailing duty rate to accord with 19 U.S.C. § 1671 as interpreted by the Court in *Usinor II* and *Usinor III*.

Although both Commerce and Inland agree that the *Third Redetermination* is consistent with the Court's remand order, that is not the end of the matter, at least for these parties. Commerce and Inland maintain that, while Commerce followed the Court's order from *Usinor III*, the Court did not have the power to issue such an order. Commerce and Inland assert that the Court's order in *Usinor III* is contrary to law. *See Def.'s Reply Cmts.* at 2; *Def.–Int.'s Cmts.* at 2; *Letter from Charles Owen Verrill, Jr. to Hon. William M. Daley* at 2 (July 21, 1991)(by ordering Commerce "to amend the countervailing duty to reflect the evidence of transfers from the parent company to non-French production operations * * * the Court unlawfully substituted its judgment for that of [Commerce] on a factual determination.").

Commerce and Inland misapprehend the holdings of the Court in *Usinor II* and *Usinor III*. In *Usinor II*, the Court considered Commerce's use of the "intent-plus-control" test. As discussed in *Usinor II*, Commerce adopted the "intent-plus-control" test to determine the relevant portion of a firm's production that should be used to calculate the countervailing duty rate because the statute is silent on the method that should be used to make this determination. *See* 19 U.S.C. § 1671 (1988). After applying this test, Commerce determined the subsidies likely benefitted only Usinor Sacilor's domestic French production and, therefore, its non-French production should be excluded from the calculation of the countervailing duty. *Usinor Sacilor II*, ____ CIT at ____, 955 F. Supp. at 1487.

It is well settled that under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), it is within the Court's province to assess whether an agency's interpretation of a statute is reasonable when the statute is silent or ambiguous with respect to a specific issue. 467 U.S at 843. Therefore, under *Chevron*, the Court had the opportunity to decide whether Commerce's decision to adopt the "intent-plus-control" test was based on a permissible construction of 19 U.S.C. § 1671.

This is precisely the task the Court performed in *Usinor II*. After finding that the language of 19 U.S.C. § 1671 was silent on the issue at hand, the Court in *Usinor II* assessed the reasonableness of Commerce's test by reviewing the legislative history of the statute. In so doing, the Court observed that "[t]he legislative history reflects Congress' intent that Commerce ascertain which products are likely to have benefitted from countervailable subsidies when it determines how it will allocate the value of such subsidies." ____ CIT at ____, 955 F. Supp. at 1487 (citing S. Rep. No. 96–249, at 85 (1979), *reprinted in* 1979 U.S.C.C.A.N. 381, 471 ("Reasonable methods of allocating the value of * * * subsidies over the production or exportation of the products benefitting from the subsidy

must be used."); H.R. Rep. No. 96–317, at 75 (1979) ("[I]n calculating the *ad valorem* effect of non-recurring subsidy grants or loans, reasonable methods of allocating the value of such subsidies over the production or exportation of products benefitting from them will be used.")). Using this legislative history as a guide, the Court in *Usinor II* rejected Commerce's test, finding that, as applied, the test effectively foreclosed review of relevant economic evidence on the effect of subsidies. Thus, the Court held that it was unreasonable for Commerce to rely exclusively on the "intent-plus-control" factors when the administrative record contains other economic evidence that Commerce could consider. *Id.* at 1488. Consequently, the Court remanded in *Usinor II*, directing Commerce to determine what constituted the relevant portion of Usinor Sacilor's production by assessing the economic evidence contained in the administrative record. *Id.*

In *Usinor III*, the Court was obliged to review the factual findings Commerce made in its *Second Redetermination* (*i.e.*, those made pursuant to the Court's remand instructions in *Usinor II*). *Usinor III* thus came before the Court solely as a "substantial evidence" case. The Court in *Usinor III* concluded that Commerce's review of the economic evidence amounted to no more than conclusory statements that the effect of the transfer of funds to non-French production should be accorded "marginal weight," and that the evidence of transfers was outweighed by the "intent-plus-control" factors. Commerce failed to articulate a reasoned analysis as to why the other economic evidence was insufficient, and why it should be accorded only marginal weight. Thus, unsurprisingly, the Court in *Usinor III* held Commerce's factual findings were not supported by substantial evidence. ____ CIT at ____, 966 F. Supp. at 1244.

In doing so, the Court in *Usinor III* did not interpose its own analysis for that of Commerce. Rather, after a hard look at the record evidence, the Court concluded Commerce ignored direct and conclusive evidence on the likely effect of the subsidies. *Id.* at 1244. *See also Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416, 91 S.Ct. 814, 823, 28 L.Ed.2d 136 (1971) (stating that "the inquiry into the facts is to be searching and careful."); *Jeannette Sheet Glass Corp. v. United States*, 11 CIT 10, 15, 654 F. Supp. 179, 183 (1987) (citations omitted) (a court may reverse an agency's action where there "is no rational nexus between the facts found and the choices made."). Because the Court in *Usinor III* deemed Commerce's factual findings unsupported by record evidence, the Court again remanded to Commerce. Accordingly, Commerce and Inland's contention that the Court acted contrary to the law in *Usinor III* is without merit.

CONCLUSION

For the foregoing reasons, the Court finds that Commerce's remand results are consistent with law and supported by substantial evidence on the record. Accordingly, Commerce's remand results are sustained. Judgment and order thereon is entered accordingly.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C97/79 12/15/97 Aquilino, J.	Xerox Corp.	94–3–00187	Not stated	32% of values set out in entry papers	Agreed statement of facts	Buffalo Various parts and accessories of electrostatic photo-copiers, printers, and similar business machines
C97/80 12/15/97 Aquilino, J.	Xerox Corp.	94–7–00428	Not stated	32% of values set out in entry papers	Agreed statement of facts	Buffalo Various parts and accessories of electrostatic photo-copiers, printers, and similar business machines
C97/81 12/17/97 Watson, J.	Marubeni America Corp.	97–5–00731	7407.10.15 Not stated	7411.10.10 1.5%	Agreed statement of facts	Los Angeles, Seattle, San Juan Copper tubes
C97/82 12/18/97 Watson, J.	J.G. Durand Int'l	95–8–01007	7013.39.20 30%	7010.90.50 Free of duty	Myers *v.* U.S. S.O. 97–75	Los Angeles Canet pistachio canning jar 2L

ABSTRACTED VALUATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	VALUATION	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
V97/11 12/17/97 Carman, C.J.	Campbell Soup Co.	91–5–00404	Computed value at $2,967,658	Computed value at $2,559,696	Agreed statement of facts	Presidio Tomato paste

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